

NEW YORK STATE
LEGISLATIVE TASK FORCE ON DEMOGRAPHIC RESEARCH AND
REAPPORTIONMENT

PUBLIC HEARING
CONGRESSIONAL AND STATE LEGISLATIVE REDISTRICTING

Thursday, September 22, 2011

Joan & Allen Bernikow
Jewish Community Center
1466 Manor Road
Staten Island, NY
10:00 a.m.

Demographic Research and Reapportionment, 9-22-2011

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

INDEX

	Page
ASSEMBLY MEMBER JOHN J. MCENENY NYS LEGISLATIVE TASK FORCE ON DEMOGRAPHIC RESEARCH AND REAPPORTIONMENT	4
SENATOR MICHAEL F. NOZZOLIO NYS LEGISLATIVE TASK FORCE ON DEMOGRAPHIC RESEARCH AND REAPPORTIONMENT	7
SENATOR MARTIN M. DILAN NYS LEGISLATIVE TASK FORCE ON DEMOGRAPHIC RESEARCH AND REAPPORTIONMENT	8
SENATOR ROBERT OAKS NYS LEGISLATIVE TASK FORCE ON DEMOGRAPHIC RESEARCH AND REAPPORTIONMENT	8
DEBORAH ROSE NYC COUNCIL MEMBER, 49TH DISTRICT	9
RICHARD VERARDI FMR EMPLOYEE, LOCAL CENSUS OFFICE IN BENSONHURST	16
TODD BREITBART	25
DAVID JONES	32

1 Demographic Research and Reapportionment-9/22/11

2 (The public hearing commenced at 10:00
3 a.m.)

4 ASSEMBLY MEMBER JOHN J. MCENENY, CO-
5 CHAIR, NYS LEGISLATIVE TASK FORCE ON DEMOGRAPHIC
6 RESEARCH AND REAPPORTIONMENT: Thank you for your
7 patience. We were delayed by an accident on
8 Verizano [phonetic] for Senator Dilan, and we
9 understand--we called Senator Mike Nozzolio. He
10 is about five minutes away coming in a taxi and
11 asked us not to keep you delaying any longer,
12 especially since we have certain things we have
13 to announce. One is as you know this is LATFOR,
14 the abbreviation of the New York State
15 Legislative Task Force on Demographic Research
16 and Reapportionment. The membership consists of
17 two elected members from each house, the Assembly
18 and the Senate, and two citizen representatives.
19 I will be joined shortly by my co-chair, who is
20 Senator Michael Nozzolio, and I think we should
21 switch and keep the two branches together. And
22 Senator Nozzolio is joined by Senator Dilan to my
23 immediate left and also by Welquis Lopez, who is
24 the citizen representative. And on the far left

1 Demographic Research and Reapportionment-9/22/11

2 is one of our two co-chairs, Debra Levine, or
3 excuse me, co-executive directors, staff
4 position. And to my immediate right is my
5 colleague in the Assembly, Bob Oaks, and the
6 citizen representative Roman Hedges. This is a
7 function, which is required by law by the Supreme
8 Court. The Districts, which now exist for the
9 United States House of Representatives, the New
10 York State Senate and the New York State Assembly
11 become stale every ten years as our people move
12 around. Some grow and become larger. Some
13 become smaller, and according to the rules of the
14 Constitution and also the Voting Rights Act of
15 1965 we have an obligation to adjust those rules
16 as soon as we can following the census, in our
17 case the 1910 census. Without further adieu,
18 this is the--oh, I think we're about the 11th of
19 14--1919, well, 2010, time warp, you know. I'm
20 the historian up here. Sometimes I'm more
21 comfortable back there. But this is the 11th or
22 so of 14 hearings. These hearings are more
23 conceptual, more academic. We want to hear why
24 the current districts don't work or why if

1 Demographic Research and Reapportionment-9/22/11

2 they're inadequate numbers they should expand in
3 this direction versus that. Most people testify
4 to keep neighborhoods and groups together. At
5 least that's been the pattern across the state
6 regardless of geography, and we normally ask you
7 to keep your comments to five minutes. But we
8 normally get as many as 40 to 60 people showing
9 up. So we'll give you a little bit of leeway on
10 that. But if you've given a tremendous amount of
11 testimony in terms of the printed page, let me
12 assure you that that testimony is part of the
13 record. Everything that you say obviously is
14 televised here and will live forever in
15 cyberspace because it goes on our LATFOR web site
16 and also your verbal remarks will be turned into
17 a transcript, which will become part of the case
18 file. And most times there are challenges to
19 redistricting so that becomes part of the
20 official record. We encourage people to send in
21 maps electronically or by the old-fashioned way
22 and to be as specific as they can as to what
23 neighborhood is what and one thing or another.
24 So without further adieu, I welcome my co-chair,

1 Demographic Research and Reapportionment-9/22/11

2 Senator Michael Nozzolio and ask if he or any
3 other member would like to make some opening
4 remarks. Senator?

5 SENATOR MICHAEL F. NOZZOLIO: Thank you
6 very much. Thank you very much, Assemblyman.
7 It's an honor to be in Staten Island. This is
8 our--is it eleventh--eleventh of thirteen
9 hearings that we are engaged in across the state.
10 Every borough in the City of New York has graced
11 us with their input. I'm especially pleased
12 today to welcome the senator representing this
13 great borough. Senator Andrew Lanza [phonetic],
14 it's wonderful to see you, Senator. A very well-
15 deserved applause. We should note for the record
16 that was a thunderous applause on Senator Lanza's
17 behalf. Thank you, Assemblyman. I apologize for
18 my tardiness. I just want to emphasize how these
19 proceedings are being video-recorded. The
20 recordings are part of the official record that
21 we are establishing across the state, and they
22 are available to be viewed on the LATFOR web
23 site. We encourage everyone to view that web
24 site, and those who couldn't be here today or at

1 Demographic Research and Reapportionment-9/22/11

2 any of the other hearings are welcome to submit
3 testimony so that the record will be as complete
4 as possible. We encourage citizen input. You
5 can do it through the LATFOR web site,
6 WWW.LATFOR.STATE.NY.US. So, thank you. Without
7 further adieu, Assemblyman, thank you for
8 beginning, and I look forward to hearing the
9 testimony today.

10 ASSEMBLY MEMBER MCENENY: Would any
11 other member of the panel like to make opening
12 remarks? Senator Dilan?

13 SENATOR MARTIN M. DILAN, NYS LEGISLATIVE
14 TASK FORCE ON DEMOGRAPHIC RESEARCH AND
15 REAPPORTIONMENT: I would just like to say good
16 morning. I look forward to your testimony
17 regarding the issues here on Staten Island and
18 say hello to my good friend, Senator Lanza.

19 ASSEMBLY MEMBER ROBERT OAKS, NYS
20 LEGISLATIVE TASK FORCE ON DEMOGRAPHIC RESEARCH
21 AND REAPPORTIONMENT: I'll just add my words of
22 glad to be in Staten Island today and to hear
23 input from you on the issues of redistricting,
24 and I guess, Chairman, Chairmen, let's get to it.

1 Demographic Research and Reapportionment-9/22/11

2 ASSEMBLY MEMBER MCENENY: We thank the
3 Jewish Community Center for hosting this meeting.
4 We very much appreciate their hospitality. Our
5 first speaker is Debbie Rose, Councilwoman. The
6 Senator says he's here to listen.

7 DEBORAH ROSE, NYC COUNCIL MEMBER, 49TH
8 DISTRICT: Good morning. I would like to thank
9 you for coming to Staten Island. I understand
10 that Nassau County wasn't as fortunate, and so I
11 want to thank you for understanding the
12 importance of Staten Island in this process and I
13 want to welcome you. To Senator Dilan I want to
14 say that it's a pleasure working with your son in
15 the City Council. And so I want to thank
16 Chairmen Nozzolio and McEneny and the members of
17 the Committee for giving me the opportunity to
18 speak before you today. My name is Debbie Rose,
19 and I represent the 49th District of the New York
20 City Council, which comprises the entire north
21 shore of Richmond County. I'm here today to lend
22 my voice to the chorus of individuals who have
23 stated that they want a fair redistricting
24 process, which takes into account the diversity

1 Demographic Research and Reapportionment-9/22/11

2 of the people who are located in these respective
3 districts, and ensures that each community is
4 able to be empowered by having local
5 representation in our legislative bodies that is
6 reflective of the communities that they
7 represent. I am pleased to hear that this
8 committee will fully implement the prison account
9 law, which requires LATFOR to develop a
10 redistricting database in which prisoners in
11 federal and state custody have been subtracted
12 from their places of incarceration and in which
13 prisoners in state custody are to the extent
14 possible reallocated to their prior residential
15 addresses. I agree with many of my colleagues
16 who have stated that LATFOR should make the
17 amended database including all mandatory
18 subtractions and reallocations available to the
19 public as the basis for legislative redistricting
20 proposals to be submitted. I believe that public
21 participation in this process would increase
22 tenfold if this information is made available
23 before the next round of hearings. I also feel
24 that LATFOR should draw the lines where people

1 Demographic Research and Reapportionment-9/22/11

2 live. While I am not advocating for an advantage
3 given to either upstate or down state, the lines
4 need to be drawn to reflect where New Yorkers
5 reside. I fully understand the daunting task
6 that you have ahead of you, but I can't stress
7 enough that there should be as small a deviation
8 as possible when drawing district lines.

9 Ideally, a zero percent deviation would be
10 optimal, but we all understand that is not going
11 to be the case. However, Governor Cuomo called
12 for no more than a 2% deviation in his
13 redistricting plan, and based on the census
14 numbers, and I believe that's an achievable goal.

15 Additionally, I ask LATFOR to draw
16 districts that are easily accessible. In many
17 districts throughout the state, you would have to
18 leave your district and re-enter into another
19 district just to re-enter your home district.
20 Please consider drawing district lines that not
21 only preserve the contiguity of the district but
22 are sensitive to the various communities that
23 reside in those districts. I would like to also
24 encourage you to please safeguard the integrity

1 Demographic Research and Reapportionment-9/22/11

2 of this process by maintaining an open,
3 transparent process, which ensures public access.
4 Thank you so much.

5 ASSEMBLY MEMBER MCENENY: Thank you very
6 much, Councilwoman. We like to feel that this is
7 the most open process that it has ever been to
8 date, not only because of our willingness to make
9 it so, but also because the technology is so much
10 more available, the web site for example. A
11 number of good government advocates have
12 purchased software, and as far as practice, we
13 try and get the information out as soon as we
14 can. When the prisoner data is even more
15 expanded than it is now as we add some of the
16 more difficult addresses to it, that too will be
17 sent out so that the people may draw it. We
18 appreciate specifically maps, which are submitted
19 from groups and individuals, many of whom have
20 done so already. It is a zero tolerance for
21 Congress. It's legally it can go 10%, 5% above
22 or below on a State or Assembly district.
23 Sometimes it will take larger numbers to comply
24 with the Voting Rights Act of 1965 for districts

1 Demographic Research and Reapportionment-9/22/11

2 that affect previously disadvantaged minorities.

3 The governor's proposal calls for 1%, which is

4 constitutionally impossible because of our

5 constitutional prohibition on splitting towns.

6 So, if that were to pass, it would need some

7 amendment to comply with the Constitution. Thank

8 you very much for coming.

9 MS. ROSE: Could I just ask a question?

10 ASSEMBLY MEMBER MCENENY: Certainly.

11 MS. ROSE: How will you actually weigh

12 the input that you are getting from the public in

13 terms of how the lines should be drawn?

14 ASSEMBLY MEMBER MCENENY: The more

15 specific the input, people who will describe a

16 neighborhood instead of saying keep it together

17 and will actually give an argument--

18 MS. ROSE: [interposing] Draw the line.

19 ASSEMBLY MEMBER MCENENY: --this

20 neighborhood used to be this big. It is now

21 expanded through migration for a particular

22 group. This is very helpful. Vague information

23 is not helpful. We see that all the time, and

24 also information that takes into account not only

1 Demographic Research and Reapportionment-9/22/11

2 the tunnel vision, which we all have for our own
3 particular district but understands what it's
4 going to do to the district next to it. The
5 quality of the input varies. Some of it is truly
6 excellent. We have gotten some very good
7 information. I've been doing this since 1973 on
8 a local level. I took the census in 1980, and
9 because of these hearings, I have changed my mind
10 on a number of things of tools that should be
11 used. So, the hearings are very, very useful to
12 us. Now people are starting to send in more
13 maps, and that's very good. We also have a
14 community board map for the City of New York, for
15 example, and we are taking into account not only
16 ethnicity and community of neighborhoods but also
17 commuting patterns, economic patterns, and so on.

18 MS. ROSE: And have you received much
19 specific input from Staten Island?

20 ASSEMBLY MEMBER MCENENY: Well, I don't
21 know. We just started.

22 SENATOR NOZZOLIO: Councilwoman, if I
23 may interrupt my esteemed co-chair, at each of
24 the hearings we have asked participants to

1 Demographic Research and Reapportionment-9/22/11

2 provide specific, detailed mapping that we were
3 in Brooklyn and Manhattan earlier this week, the
4 Bronx, and Queens earlier this month. Each time
5 we asked for specific interest groups that
6 provided their input. We wanted them to then
7 provide us with mapping, suggested maps that we
8 could employ and deploy as proposals are being
9 drafted. So, use your web site, your Facebook
10 page, to encourage that similar participation
11 here in this borough.

12 MS. ROSE: I will, and they have up
13 until how long to submit those maps?

14 SENATOR NOZZOLIO: We are under a very
15 questionable timeframe. There may be a
16 significant move in the primary date. If that's
17 the case, then the entire governmental and
18 political process changes. These districts have
19 to be in place sufficient time before the primary
20 date to have the proper circulation of petitions,
21 the proper drawing of polling places.

22 MS. ROSE: Absolutely.

23 SENATOR NOZZOLIO: So we are very
24 compacted now in terms of the time frame. Sooner

1 Demographic Research and Reapportionment-9/22/11

2 than later is the request for submission of
3 individual proposals. We also have a round of
4 hearings to take place after lines are suggested,
5 and we expect at least a dozen or so hearings to
6 have to take place across the state once the
7 lines are put forward as proposals to have public
8 input on those proposals. So, it is a long
9 answer for a very important question and the
10 important question is timeliness is of the
11 essence, sooner than later, and I would suggest
12 within the next month we very much need to see
13 specific proposals.

14 MS. ROSE: And I will put them on--I'll
15 use all of my media to get that message out, and
16 we will be submitting a map ourselves. Thank you
17 so much.

18 SENATOR NOZZOLIO: Very nice to see you.

19 ASSEMBLY MEMBER MCENENY: Thank you very
20 much. Richard Verardi? Good morning.

21 MR. RICHARD VERARDI, FMR EMPLOYEE, LOCAL
22 CENSUS OFFICE IN BENSONHURST: Good morning. I'm
23 here not about the redistricting of Staten Island
24 per se. I'm more concerned about the whole

1 Demographic Research and Reapportionment-9/22/11

2 redistricting of New York City and the funds that
3 Staten Island and New York City is losing from
4 the federal government. I worked 2000 census. I
5 think you said you worked 80.

6 ASSEMBLY MEMBER MCENENY: Yes.

7 MR. VERARDI: I was the ELCOM [phonetic]
8 in 2000. I had the cooperation of Councilwoman
9 Debbie Rose, her organization, Staten Island
10 African American Political Association, or
11 organization, I always forget, the Borough
12 president, Terry Troy [phonetic], Reverent Terry
13 Troy - - , 2010 I was also the ELCOM first in
14 Bensonhurst for a year, and the Advance
15 [phonetic] has an article from *Associated Press*,
16 "Bensonhurst, Bay Ridge, Astoria and Jackson
17 Heights are Two Offices that the City is
18 Challenging the Count." I was the ELCOM in
19 Bensonhurst on 86th Street. I then transferred
20 to Staten Island on South Avenue for the Staten
21 Island Office. Let me tell you something.
22 You're relying on the census numbers to re-
23 district. They're under-counted. I can't prove
24 it. I don't have anything in my hand, but being

1 Demographic Research and Reapportionment-9/22/11

2 an ELCOM in both of those offices and comparing
3 2010 to 2000, it was 180-degrees out of phase.
4 In 2000 we had managers in the NYRCC who knew how
5 to manage, treated you with respect and let you
6 do your job. I had myself and three other
7 managers, we did everything. We did the
8 partnership. We addressed groups. We went down
9 to Debbie Rose's group. Janet Wilson who was
10 also a member of that group opened up many, many
11 doors for us. We did a couple of television
12 shows of Staten Island Cable with community
13 relations officer, I forgot his name right now,
14 it's 10 years ago.

15 This time we had Partnership doing
16 everything. They had millions of dollars of
17 freebies, which I didn't have in 2000. I got the
18 same results in 2000 with less aggravation than
19 we did in 2010. I believe we got 1% more than
20 2000 in the mail return rate. It was dictated to
21 me rush, rush, rush, get the job done. I don't
22 care. I'm a perfectionist. I want to do a good
23 job. I lived on Staten Island all my life. The
24 monies that Staten Island could have gotten every

1 Demographic Research and Reapportionment-9/22/11

2 so many months we go through the firehouse
3 closing routine. Maybe if we got our fair share
4 of federal money, we wouldn't have to go close
5 firehouses or schools.

6 The NYRCC just pushed to get the job
7 done. Adcan and Bensonhurst with the handheld
8 computers--waste of time. They didn't work.
9 Every time I had a problem, I'd turn it over to
10 the IT. They sent it up to the City. You know
11 what the response was? Not technical,
12 administrative. How come it's not technical if
13 the information doesn't go from the HHC, the
14 handheld computer, to the field operations
15 supervisor or the crew leaders' computers on into
16 the computers in the RCC, for the data capture of
17 house here, house here, the addresses. Areas and
18 blocks were missed completely in Brooklyn. There
19 were areas and blocks that were missed and NRFU,
20 non-response follow up on Staten Island. A
21 former manager of mine in 2000, I ran into him,
22 he says nobody ever came to my house. He said I
23 didn't fill out the form. Nobody came to my
24 house to follow up. He says I've got 11 people

1 Demographic Research and Reapportionment-9/22/11

2 living in my house. That's one verifiable
3 example. I've been in the workforce for over 50
4 years. I proved to the people in the NYRCC, I
5 don't need ten clerks in admin. on the midnight
6 shift. I was ordered to bring in ten clerks who
7 sat around. I proved to them that I could do the
8 work in a shift and a half. In the field, I was
9 ordered to bring in seven clerks on the midnight
10 shift when the computerized system was down from
11 11:00 at night until 7:00 in the morning for
12 maintenance. In QA who followed up on field,
13 another seven clerks. Correct me if I'm wrong, I
14 believe the law states you cannot make phone
15 calls to individual homes after 9:00 at night.
16 They didn't care. They ordered me to make phone
17 calls.

18 I'm a perfectionist. I told my people I
19 want a slow, accurate, methodical count. I don't
20 care if we finish dead last out of the 30 offices
21 in the NYRCC. I want everybody on Staten Island
22 counted, and I honestly and truly believe in 2000
23 we counted 443,728. That's going on my
24 tombstone. Staten Island in New York in 2010

1 Demographic Research and Reapportionment-9/22/11

2 468,730. That's not going on the tombstone, but
3 coincidentally I was on a city web site, I don't
4 have a date that I went on it, but according to
5 the citydata.com, the population of 7/07, July of
6 2007, they predicted 481,026. Where did those
7 other people go? We were like puppets on a
8 string. We couldn't act. We couldn't do
9 anything unless the NYRCC said we can do it.
10 When I had meetings with my crew leaders, my
11 assistant crew leaders, field op supervisors, and
12 my boss was there and I told him I want a slow,
13 accurate, methodical count, you know what he did?
14 He stood up and said, "You people don't do your
15 job and you don't do it fast enough, we'll fire
16 you all and we'll bring in crews from Juno,
17 Alaska." I believe morale is directly
18 proportional to efficiency. What kind of
19 efficiency can I get from my employees, my field
20 people when they are told that? And I have to
21 say I had a tremendous crew in 2010, my office
22 crew, my field crew in spite of all of the
23 adversity we went through they worked. And just
24 for your information, I was terminated on June

1 Demographic Research and Reapportionment-9/22/11

2 1st of 2010 for poor performance. My office was
3 at 30% on the first of June, one month after NRFU
4 started. The next highest office was 31. They
5 said I wasn't doing enough of my job, wasn't
6 doing it fast enough. Coincidentally I have an
7 EEO complaint against the Partnership Specialist,
8 and I believe that I was fired in retaliation for
9 that EEO complaint. I don't want to go into
10 details. It has nothing to do with the
11 redistricting. My suggestion is--there's another
12 article here that New York State will lose based
13 on the date of the article two seats based on the
14 census numbers. I think the City of New York,
15 the State of New York should, well, I can't get
16 into the State, the City. Thirty offices in the
17 NYRCC purview, I think every one of those
18 offices, their count should be adjusted, and I
19 think it should be adjusted higher. Thank you.

20 ASSEMBLY MEMBER MCENENY: Would you
21 state since this is being televised and shown
22 throughout the state, NYRCC is the?

23 MR. VERARDI: New York Regional Census
24 Center.

1 Demographic Research and Reapportionment-9/22/11

2 ASSEMBLY MEMBER MCENENY: Thank you very
3 much.

4 MR. VERARDI: There are 12 of them
5 throughout the United States adjacent to the
6 regular census offices.

7 ASSEMBLY MEMBER MCENENY: Thank you very
8 much.

9 MR. VERARDI: Yes, thank you.

10 ASSEMBLY MEMBER MCENENY: Senator Dilan?

11 SENATOR DILAN: Excuse me, sir.

12 MR. VERARDI: Oh, sorry.

13 SENATOR DILAN: With respect to what you
14 testified to this morning, have you contacted the
15 Mayor's office, namely Joe Salvo who is heading
16 the challenge on behalf of the Mayor and
17 indicated these problems to him?

18 MR. VERARDI: I tried to send an e-mail
19 to the Mayor's office. I don't know if I had the
20 right address or not, no luck. I tried to
21 contact various other electeds, no luck. I sent
22 a 40-page write up to the OIG in Washington, the
23 GAO in Washington, and also Brian Moynihan
24 [phonetic] the field director for the census as

1 Demographic Research and Reapportionment-9/22/11

2 we say in Italian, nothing, nobody is interested.

3 SENATOR DILAN: Well, the person in
4 charge of challenging the census count for the
5 Mayor is Joe Salvo from the New York City
6 Planning Commission. You may want to try to
7 reach out to him. If we can get you his
8 information, we'll do that.

9 MR. VERARDI: The address I got off of
10 the internet, the e-mail address, either he got
11 it and didn't respond or--

12 SENATOR DILAN: [interposing] We'll try
13 to get you the proper information, or perhaps
14 your council person.

15 FEMALE VOICE: [off mic]

16 SENATOR DILAN: Thank you. Thank you.

17 MR. VERARDI: I've lived here all my
18 life. I feel that this money belongs to us.

19 ASSEMBLY MEMBER MCENENY: Mr. Verardi,
20 would you mind giving us a copy of those 40
21 pages?

22 MR. VERARDI: I didn't bring it with me,
23 but I can get it.

24 ASSEMBLY MEMBER MCENENY: At some point,

1 Demographic Research and Reapportionment-9/22/11

2 I would appreciate it if you would give us a
3 copy. We'll distribute it.

4 MR. VERARDI: Who should I send it to?

5 ASSEMBLY MEMBER MCENENY: You want to
6 send it to me? I'll give you a card since you
7 and I share some of the same wounds. Thank you
8 very much.

9 SENATOR NOZZOLIO: Thank you very much.

10 ASSEMBLY MEMBER MCENENY: Todd
11 Breitbart, and I believe you have testified
12 before.

13 MR. TODD BREITBART: Yes, I testified
14 yesterday. For the record I'll repeat my name
15 and what I said about myself. My name is Todd
16 Breitbart. I directed the staff work on
17 redistricting for the Democratic leaders of the
18 State Senate from 1980 through my retirement at
19 the end of 2005. I do not know work for or
20 represent the Minority Leader. The opinions I
21 express are solely my own. Today I wish to
22 address the determination of the number of Senate
23 districts. I have submitted a written statement
24 including a detailed discussion of the

1 Demographic Research and Reapportionment-9/22/11

2 Constitutional rule, the development of its
3 interpretation and series of ruling by the New
4 York State Court of Appeals, the varying
5 interpretations of several elements of the
6 formula, and the applications of those
7 interpretations to past and current census data.
8 At your hearing yesterday after explaining that
9 absent an amendment to the State Constitution,
10 the legislature cannot divest itself of the
11 authority to redistrict the Senate and the
12 Assembly. Senator Nozzolio reminded a witness,
13 "The Constitution is an inconvenient truth."
14 When asked, however, to say definitely what
15 number of Senate districts was to be created,
16 Senator Nozzolio said that no decision had yet
17 been made. At the hearing in Rochester on July
18 20th, Senator Nozzolio said, "The Constitution
19 and the laws of the State provide for the ability
20 for that number to grow or shrink depending on
21 particular policy questions." And he added, "Let
22 the public tell us whether the State Senate,
23 which is now at 62, should be changed to another
24 number. I urge the task force to be guided by

1 Demographic Research and Reapportionment-9/22/11

2 the wisdom that someone expressed yesterday. The
3 Constitution is an inconvenient truth. The
4 Constitution provides that the size of the Senate
5 is to be determined by the growth in population
6 of certain populace counties relative to the rest
7 of the state since 1894. It does not permit the
8 legislature to adopt a different number because
9 of what the public wants, or for reasons of
10 policy, whatever those may be. If a different
11 rules seems wise, then you may propose a
12 Constitutional amendment, just as you may propose
13 a Constitutional amendment to change the rule
14 that legislative redistricting is to be affected
15 by the legislature's enactment of a law. All of
16 the information necessary to determine the
17 constitutionally mandated number of districts,
18 the 2010 census data, has been available since
19 March. There is no excuse for the Task Force's
20 failure at this date to decide the question and
21 to announce its decision. The two different
22 interpretations of the rule that have previously
23 been followed, one of which has been abdicated by
24 the Senate majority's past and present counsel,

1 Demographic Research and Reapportionment-9/22/11

2 Michael Carbin [phonetic], would both yield 62
3 districts as applied to the 2010 census counts.
4 As my written statement recounts in detail and
5 amply documents, the change in the number of
6 districts in 2002 was made for reasons that had
7 nothing whatever to do with faithfulness to the
8 Constitution. The Constitutional interpretation
9 supplied by Mr. Carbin merely rationalized the
10 decision that had been made at least eight months
11 earlier for other reasons entirely.

12 Nevertheless, Mr. Carbin's interpretation is
13 reasonable. In fact, it is exactly the same
14 interpretation offered by the unsuccessful
15 Democratic plaintiffs in 1972 in the case of
16 Schneider v. Rockefeller [phonetic] the last time
17 this issue was litigated. A history of
18 manipulating Constitutional ambiguity to support
19 a partisan gerrymandering or to facilitate the
20 malapportionment of Senate districts as in 2002,
21 provides no valid precedent for ignoring the
22 Constitution. If you create any number of
23 districts other than 62, you will now be
24 repudiating Mr. Carbin's interpretation as well

1 Demographic Research and Reapportionment-9/22/11

2 as the interpretation followed by Republic Senate
3 majorities in 1972, 1982 and 1992. You have in
4 fact since the census data became available in
5 March been soliciting redistricting proposals
6 from the public on the basis of 62 Districts.
7 The frequently asked questions page of the LATFOR
8 web site includes a link, "Click here to view
9 technical determination of the size of the
10 Senate." The link is to Mr. Carbin's March 7th,
11 2002, memo. Anyone who applies his
12 interpretation to the 2010 census counts will
13 find that the "technical determination of the
14 size of the Senate" requires 62 Districts. And I
15 should emphasize, I'm not referring to the
16 statement at the end of Mr. Carbin's memo in
17 which he concludes that his interpretation will
18 produce 62 districts. He was referring, of
19 course, at that time to the census counts from
20 2000, but applying the same interpretation of the
21 constitution that he advocates so reasonably in
22 his memo to the current census counts will
23 produce the same result. If you now produce a
24 plan of other than 62 districts, you will have

1 Demographic Research and Reapportionment-9/22/11

2 departed from all constitutional precedent. You
3 will obviously have repeated the unprincipled and
4 self-serving manipulation of the rule that
5 occurred ten years ago, and you will have
6 practiced deception upon the public and made a
7 mockery of your invitations for the public to
8 participate in the redistricting process. I hope
9 that my having called your attention to the FAQ
10 page will not lead to the withdrawal of Mr.
11 Carbin's memo this evening. On the contrary, you
12 should embrace his sound legal advice for which
13 the State of New York has compensated him
14 generously announce that you will create 62
15 Districts and keep faith with the oath that you
16 took in January to uphold the Constitution of the
17 State of New York.

18 SENATOR NOZZOLIO: Just a couple of
19 questions, Mr. Breitbart.

20 MR. BREITBART: Yes, that's correct.

21 SENATOR NOZZOLIO: Thank you very much
22 for this analysis. It's extremely thorough, and
23 I think it will be exactly what we're trying to
24 have as part of the record and part of the input

1 Demographic Research and Reapportionment-9/22/11

2 of our citizenry. It's my understanding by your
3 submission that you were an employee of LATFOR
4 at--

5 MR. BREITBART: [interposing] I was for
6 a while on the LATFOR payroll, afterwards on the
7 payroll of the Senate per se, in the minority
8 leader's office. One or the other, performing
9 the same work, supervising the redistricting
10 staff work for the Senate minority through my
11 retirement at the end of 2005.

12 SENATOR NOZZOLIO: So which minority
13 leader's staff were you in?

14 MR. BREITBART: First, Senator
15 Orenstein, then Senator Connor, and then Senator
16 Patterson, Governor Patterson when he was the
17 minority leader.

18 SENATOR NOZZOLIO: Thank you. I was, as
19 you pointed out but sort of did so in a way that
20 was around the barn that I did indicate yesterday
21 to Mayor Koch that redistricting has to comply
22 with the State Constitution. We cannot look at
23 the Constitution as an inconvenient truth. Your
24 analysis and assessments are extremely

1 Demographic Research and Reapportionment-9/22/11

2 appreciated and thank you for your submission
3 today.

4 MR. BREITBART: Thank you.

5 ASSEMBLY MEMBER MCENENY: Thank you very
6 much. Mr. David Jones, good morning.

7 MR. DAVID JONES: Good morning. I also
8 want to thank you for holding hearings here on
9 Staten Island and only suggest that maybe it
10 could have been done at night when there could
11 have been more Staten Islanders. This is a
12 working class borough. People here have jobs in
13 the daytime, so it's not--you know, it's
14 difficult for them to be here and voice their
15 opinion.

16 My name is David Jones, and I'm a long-
17 term resident of Staten Island, and have been
18 somewhat active over the years. We are here
19 today for a very important purpose, and that is
20 to recommend to you how new State Legislative
21 Districts ought to be drawn for the next decade.
22 You have a great responsibility ahead. In 2002
23 we were robbed of a fair and honest State Senate
24 redistricting plan. Instead of drawing districts

1 Demographic Research and Reapportionment-9/22/11

2 equally across the state, the members of this
3 task force ten years ago played politics and
4 denied the residents of New York City the fair
5 and correct number of Senate districts to which
6 we were entitled. Instead, in 2002, line drawers
7 made as many upstate districts as they could and
8 drew as few downstate districts as possible.
9 That was unfair then, and it would be unfair if
10 it happened again. I'm not asking for more
11 districts, only the fair and correct number of
12 districts. Unless you are required by law to
13 keep certain counties and towns from being
14 divided or to comply with the federal Voting
15 Rights Act, you should draw each Senate district
16 to be equal in population as much as possible.
17 Ten years ago we were also robbed of fair
18 districts when a new Senate district was added
19 without letting anyone know that it was going to
20 happen. The legislature added a district in
21 Brooklyn, but even after all of the growth in the
22 Latin community, the new district was added to
23 elect a non-minority community center. Please,
24 do not let this happen again. The Senate should

1 Demographic Research and Reapportionment-9/22/11

2 remain at the current number of districts, not
3 fewer, not more. The State Constitution was
4 amended over 100 years ago to account for New
5 York City becoming a united city of five counties
6 and provided a formula. That formula may be old,
7 but it is still the law. One person, one vote,
8 requires fair representation for all. Please
9 draw districts that maintain equal population
10 across the state, and that follows where people
11 live in their communities. When you draw your
12 districts, please don't play politics.

13 Redistricting is about people. I want to thank
14 you.

15 SENATOR NOZZOLIO: Thank you, Mr. Jones.

16 ASSEMBLY MEMBER MCENENY: Thank you. Is
17 there anyone else here who would like to testify
18 before this hearing? There being none, I declare
19 this hearing closed. Thank you very much for
20 your hospitality here, especially to the JCC.

21 (The public hearing concluded.)

Demographic Research and Reapportionment, 9-22-2011

C E R T I F I C A T E

I, Trisha Ruckart, do hereby certify that the foregoing typewritten transcription, consisting of pages number 1 to 35, inclusive, is a true record prepared by me and completed from materials provided to me.



Trisha Ruckart, Transcriptionist

October 10, 2011