

NEW YORK STATE ASSEMBLY

ASSEMBLY STANDING COMMITTEE ON
GOVERNMENTAL OPERATIONS

ASSEMBLY LEGISLATIVE TASK FORCE ON
DEMOGRAPHIC RESEARCH AND REAPPORTIONMENT

PUBLIC HEARING ON
REDISTRICTING

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A P P E A R A N C E S:

ASSEMBLYMEMBER ROANN DESTIO, Chair - Committee on Governmental Operations

ASSEMBLYMEMBER ADRIANO ESPAILLAT, Co-chair -
Legislative Task Force on Demographic Research and
Reapportionment

ASSEMBLYMEMBER MICHAEL GIANARIS

ASSEMBLYMEMBER SANDRA GALEF

ASSEMBLYMEMBER LINDA ROSENTHAL

ASSEMBLYMEMBER MICHAEL BENJAMIN

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2 ASSEMBLYWOMAN DESTITO: We're almost
3 starting on time. Good morning. I'm
4 Assemblywoman Roann Destito. I chair the New
5 York State Assembly standing committee on
6 Governmental Operations. I'm joined by my
7 partner and colleague, Assemblyman Adriano
8 Espaillat, Co-chair of the Legislative Task Force
9 on Demographic Research and Reapportionment, and
10 Assemblyman Michael Gianaris, Assemblywoman
11 Sandra Galef and I believe Assemblywoman Linda
12 Rosenthal is here somewhere or will be joining
13 us.

14 I guess I'll welcome myself here to
15 Manhattan, since everybody else probably has been
16 here.

17 This hearing marks the Assembly's third
18 statewide hearing on redistricting and
19 reapportionment. On September twenty-fifth we
20 held a hearing in Utica and on September twenty-
21 sixth we held a hearing in Buffalo, and that was
22 very strategic that we weren't there when it
23 snowed. Hearings will also be held at other
24 locations throughout the state, including Long
25 Island, Westchester and Albany. The hearing will

1 examine the process for drawing Congressional,
2 Senate and Assembly districts following the
3 twenty-ten census.
4

5 Specifically, the hearings will examine
6 ways to ensure that a fair and efficient process
7 for creating election districts is in place
8 before the next round of reapportionment is
9 conducted. Currently, there are several bills
10 pending in the assembly that would establish a
11 nonpartisan apportionment Commission and
12 mechanisms to implement a redistricting plan.
13 The three bills, two of the authors are here,
14 Assemblyman Gianaris and Assemblywoman Galef, and
15 Assemblyman Brodsky has one of the bills.

16 These hearings will consider these bills
17 as well as other ideas put forward by the public
18 to improve the reapportionment process and how to
19 conform any proposed changes with the Federal
20 Voting Rights Act, U.S. Justice Department
21 rulings and other requirements.

22 I would like to take a minute to
23 summarize some comments we've already received in
24 Utica and Buffalo. Local citizens and elected
25 officials highlighted that if a change is to take

1 place "Communities of Interest" should be kept
2 together. Advocates of independent redistricting
3 Commissions highlighted increased voter turnout,
4 competitive elections, and more compact districts
5 as reasons that New York should change to an
6 independent Commission.
7

8 The state of Iowa was highlighted as such
9 a model for change, as it has an independent
10 redistricting Commission and the majority of its
11 districts are compact. However, further
12 discussion acknowledged is much different than
13 New York in population, density, ethnicity,
14 demographically and geographically. Iowa is also
15 not captured under the Voting Rights Act, and as
16 we all know, New York is.

17 Several issues were raised, such as how
18 do other states independent Commissions operate,
19 what has been the experience of those states, has
20 voter turnout increased, are elections more
21 competitive, are the Commissions and are the
22 redistricting processes independent of politics,
23 have legal challenges and similar issues subsided
24 due to the change to an independent Commission
25 process? I am hopeful that with this hearing

1 many of these questions can be more thoroughly
2 examined, as we are fortunate to have such a
3 range of policy experts willing to testify here
4 this morning.

5
6 We will hear about the experiences of the
7 State of Arizona and New Jersey, both states with
8 independent Commissions, and both states with
9 similarities to New York. We will also hear from
10 national experts, experts on the New York City
11 process, good government groups, scholars, and
12 advocacy organizations representing the rights of
13 various constituencies.

14 I look forward to the dialogue that will
15 take place today and I thank you all for being
16 hear. I want to ask my colleague Adriano -

17 ASSEMBLYMAN ESPAILLAT: This is a great
18 opportunity. We have already been through
19 Buffalo and Utica and we hope to go around other
20 parts of the state to really listen to the public
21 on this very important issue that approaches us,
22 and that we know is very important to the city
23 and the state. I'm looking forward to hearing
24 all the testimonies across the state and here
25 from good government groups, institutions and

advocates on the redistricting process as we approach it in two thousand and ten.

ASSEMBLYWOMAN DESTITO: Thank you Adriano. We'll call on our first witness, Mr. Steven W. Lynn, Chairman of the Arizona Independent Redistricting Commission. I want to welcome you and thank you very much for being here. Thank you.

MR. LYNN: Good morning Madame Chairman, members of the Commission. You have copies of my statement and I'll be pleased to answer any and all questions.

Honorable Chairman and members of the committee, my name is Steven Lynn and I Chair the Independent Redistricting Commission, the IRC, for the State of Arizona. I've been asked to appear here today by Citizens Union. In my opening remarks, I would like to tell you about the IRC and our accomplishments and experience with a citizen driven redistricting. At the conclusion of my statements I would be happy to answer any and all questions that you may have.

In the year two thousand, the people of Arizona voted by more than a sixty percent margin

1 to adopt Proposition two hundred and six, an
2 initiative to amend the Arizona Constitution,
3 which was sponsored by the Arizona chapter of the
4 League of Women Voters and the Valley Citizens
5 League, among other groups. The measure removed
6 the task of congressional and legislative
7 redistricting from the Legislature and placed it
8 in the hands of a five-member citizen's
9 Commission. After an affirmative application and
10 a prescribed selection process, which I can
11 describe in more detail during questioning, the
12 IRX began its work in February of two thousand
13 and one.

14
15 From February two thousand and one to mid
16 two thousand and two, the IRC conducted more than
17 fifty-eight public hearings across the state,
18 created a website for collecting public comment
19 that produced more than fifty thousand hits
20 during the redistricting process, and met dozens
21 of times in open public sessions in order to
22 complete the congressional and legislative
23 mapping process.

24 All of Arizona's redistricting efforts
25 are subject to review by the U.S. Department of

Justice for compliance of the Civil Rights Act, pardon me, the Voting Rights Act. Our maps were ultimately pre-cleared, following our making some adjustments to the original maps that we drew for the state Legislature. The congressional maps were pre-cleared the first time. The IRC maps have been used in every election cycle beginning with the two thousand and two election.

The Arizona constitution sets forth seven goals for redistricting. In order of importance, they are: compliance with the U.S. Constitution and the U.S. Voting Rights Act; achieving equal population; achieving geographic compactness and contiguity; respect "Communities of Interest"; using visible geographic features, city, town and county boundaries and undivided census tracts; and favoring competitive districts, where to do so would create no significant detriment to the other goals.

Let me now discuss the other goals in more detail. At the time of the creation of the IRC, Arizona was a state with a five point six percent Republican registration advantage. And, in fact, our latest registration figures reflect

approximately the same Republican advantage.

This statistic will be significant as I discuss the impact of complying with the Voting Rights Act while trying to create competitive districts.

Remember that Arizona's goal dealing with competitive districts is the last one in the law, and in fact, is subordinate to the other goals.

It is the only goal listed which contains the clause, "where to do so would create no significant detriment to the other goals."

Nevertheless, it was the expectation of many supports of the initiative that the Commission would be able to significantly increase competition beyond the work of the Legislature.

With respect to the Voting Rights Act; compliance with the Voting Rights Act requires that jurisdictions not create maps that are retrogressive with respect to minority voting rights. In other words, in those jurisdictions where Department of Justice review is required, if a previously approved map contains a specific number of districts where language or ethnic minorities have the ability to elect representation of their choosing, then subsequent

1 maps must contain at least the same number of
2 districts with those characteristics. Since all
3 of Arizona is subject to the Voting Right Act
4 compliance, our maps for both congressional and
5 legislative districts must meet this test.
6

7 Once the IRC had drawn a sufficient
8 number of districts to satisfy the Voting Rights
9 Act requirements, and we had placed enough
10 minority voters, mot of whom were registered
11 Democrats, in those districts to assure
12 compliance, we created a Republican registration
13 advantage in the balance of the state of not five
14 point six percent, as registration suggests, but
15 sixteen percent. With a sixteen percent
16 registration advantage for either party, it is
17 difficult, if not impossible, to draw competitive
18 districts. My point is that given the Arizona
19 goals, it was difficult at best, to draw
20 competitive districts, especially in a Republican
21 leaning state, where significant compliance with
22 the Voting Rights Act is required.

23 Now add "Communities of Interest" to the
24 mix. "Communities of Interest" is a term coined
25 by former U.S. Supreme Court Associate Justice

1 Sandra Day O'Connor, from Arizona, I might add,
2 in a voting rights case some years ago. She
3 coined it, but she did not define it. The IRC
4 felt that we could either define it ourselves, or
5 in the alternate, we could let the people of
6 Arizona tell us where they felt their
7 "Communities of Interest" were. We chose the
8 latter option and so the people told us, by the
9 tens of thousand what they thought. We held a
10 special round of statewide public hearings just
11 to allow citizens to define for us what
12 constituted a "community of interest" to them,
13 and of course our website also conveyed their
14 message to us.

15
16 Several "Communities of Interest", both
17 major and minor, were identified; chief among
18 them was an Urban/Rural community of interest
19 that was very clear in the State of Arizona, and
20 Native American "Communities of Interest". There
21 are twenty-seven Native American tribes within
22 the state of Arizona, and the Latino, or as we
23 say in Arizona, the Hispanic community of
24 interest, clearly a large community of interest
25 within our state. As we mapped we tried very

1 hard to respect as many of these as we could.
2
3 Unfortunately, that meant the competition
4 suffered at the hands of this superior goal.

5 A word now about litigation and the IRC.

6 Since we completed our mapping in two thousand
7 and three, we have been engaged in defense of a
8 handful of legal challenges brought by different
9 plaintiffs for different reasons. To date, we
10 have prevailed in all but one of these suits, and
11 we feel very confident that we will prevail in
12 the last one, which is still making its way
13 through the Arizona courts.

14 Let me end my remarks by summarizing the
15 work of the Arizona Independent Redistricting
16 Commission. The IRC successfully completed our
17 charge of performing the first citizen
18 redistricting ever in the State of Arizona. Our
19 maps, not court drawn maps, have been used in
20 every election since the beginning of two
21 thousand and two. We did it in the most non-
22 political atmosphere we could establish and
23 maintain. We created maps that met all of the
24 goals set forth in the Arizona Constitution, and
25 we did it during open meetings in full view. We

1 listened to thousands of our citizens and we
2 tried as best we could to be respectful of their
3 suggestions and input. We created, for the first
4 time, a completely rural congressional district
5 in Arizona. I might add that's the largest
6 geographic congressional district outside of
7 those that are a single state district, and
8 that's because Arizona is a lot of land
9 interrupted by groups of people. In spite of the
10 conflicts arising out of the goals in our
11 constitution, we still managed to create at least
12 two competitive congressional districts and
13 several competitive legislative districts. For
14 our efforts, the IRC is very proud to have
15 received the Carrie Catt Award for outstanding
16 public service from the Arizona League of Woman
17 Voters, one of the initiative's original
18 sponsors.

19
20 With that, Ladies and Gentlemen, let me
21 thank you for your time and attention today and
22 say that I stand ready to answer any questions
23 you may have regarding the work of the Arizona
24 Independent Redistricting Commission.

25 ASSEMBLYWOMAN DESTITO: Thank you

1 very much. I'm just going to start with some
2 questions and then - oh, let me first say we've
3 been joined by my colleague Assemblyman Mike
4 Benedetto, who is also a member of the
5 Governmental Operations Committee and, I might
6 add that so is Assemblywoman Sandy Galef. Thank
7 you for being here.
8

9 Thank you very much. It seems that you
10 have been very successful in your Independent
11 Redistricting Commission. Has voter turnout
12 increased in Arizona since the new lines were
13 implemented? Have you seen an increase in voter
14 turnout?

15 MR. LYNN: Not in any particular
16 demonstrable way. The voter turnout tends to
17 fluctuate with those issues that are on the
18 ballot and those races that are highly contested.

19 So, I would not say that our work had directly
20 affected the increase in turnout, no.

21 ASSEMBLYWOMAN DESTITO: What
22 percentage do you have in turnout?

23 MR. LYNN: Again, it varies; it goes
24 up and down -

25 ASSEMBLYWOMAN DESTITO: Usually the

1
2 Legislature and the congressional, do they run at
3 the same time? We do in New York.

4 MR. LYNN: They do run at the same
5 time, they run concurrently every two years, and
6 again it varies. It's in the thirties to forties
7 percent turnout.

8 ASSEMBLYWOMAN DESTITO: You stated
9 that you felt that there were more competitive
10 districts. I think you commented that you were
11 able to accomplish more competitive districts.
12 Do you feel that all the districts have become
13 competitive?

14 MR. LYNN: No, Madame Chair, the
15 districts that we've created I believe on the
16 congressional side, let me start with that -

17 ASSEMBLYWOMAN DESTITO: How many
18 congressional districts do you have?

19 MR. LYNN: Currently we have eight.
20 We had six, so we were creating two additional
21 districts as we did our work. We were going from
22 six to eight and I think there was an opportunity
23 the first time through, in two thousand and two,
24 for four of those eight to be truly competitive
25 districts. That is to say that you could really

1 not tell going in, who had the edge in those
2 districts. Since that time, registration has
3 changed, obviously, in those districts over time,
4 and probably now we have two competitive
5 districts that are still a toss up, but others
6 have settled into a pattern either created by the
7 Voting Rights Act, or created by Republican
8 majority that have made them safer districts.
9

10 So we have two that I think are truly
11 competitive. Nationally, right now, there is a
12 lot of attention on congressional district eight
13 in Arizona, the southeast corner of the state,
14 and the interesting part of that district is that
15 it is competitive, it is by our definition the
16 not competitive of the eight we drew, but because
17 we had an eleven term incumbent, a cardinal
18 member of the Appropriations Committee, a
19 Republican in that district, it was not
20 competitive until he announced his retirement.
21 The moment he announced his retirement it became
22 highly competitive and the odds are that a
23 Democrat will take that seat this time around.

24 ASSEMBLYWOMAN DESTITO: So, I guess -
25 how do you measure competitive, you know, is this

1 measured by simply having an opponent? Is that
2 what makes it competitive, do you have a
3 definition of what competitive means?
4

5 MR. LYNN: Madam Chairman, there are
6 several definitions of competitiveness and I
7 would caution the committee to be very clear
8 about what you mean when you say you want
9 competition. In some districts, there is
10 certainly a lot of competition within the primary
11 selection process, and that would be in a
12 district that may not be competitive during the
13 general election. The same could be said about
14 several districts where you have competition
15 during both primary and general and there are
16 definitions and ways to measure competitiveness.

17 We used a formula which is called judge
18 it, and judge it is a rather complex formula that
19 takes into account the voting history of the
20 district, whether or not there is an incumbent
21 and how strong that incumbent is, and a number of
22 other factors such as registration, but does not
23 talk about registration alone. Registration
24 alone is, unfortunately, not a particularly good
25 predictor of whether or not a district is going

1 to be competitive, and so, we used "judge it"
2 which creates a purely competitive district at
3 fifty-fifty, a ration that comes out of the
4 process. Then we judged a district to be
5 competitive if it fell plus or minus three and a
6 half a percent from that mid line. So anything
7 up to fifty-three and a half percent, or down to
8 forty-six and a half percent we felt was a
9 competitive district.
10

11 Now that is a very narrow definition of
12 competitiveness and some of the districts that we
13 felt were not competitive when we drew them have
14 been competitive either in primary or general
15 elections since.

16 ASSEMBLYWOMAN DESTITO: You talked
17 about - your redistricting plan was challenged on
18 equal protection voting rights and competition in
19 your state constitution?

20 MR. LYNN: Madam Chairman, we
21 received no challenges on equal protection or
22 voting rights. None. The major challenge that
23 we received, and the one that we are still
24 litigating, is on the basis of competitiveness.
25 It is a challenge to our implementation of the

1 state constitution. The charge in case is that
2 we did not consider competitiveness early enough,
3 and that we could have created more competitive
4 districts than we did. We believe, based on a
5 court of appeals ruling that we received in this
6 very case, the one I'm talking about, that the
7 courts in Arizona will side with the Commission
8 in giving the same deference to the Commission
9 that had been given to the Legislature previously
10 in terms of substituting the courts judgment for
11 ours, and therefore our ability to draw
12 competitive districts based on balancing the
13 seven goals. We'll ultimately be upheld in
14 court. It was not a case of any violation of
15 civil rights, it was not a case of violation of
16 voting rights, there were not packing or cracking
17 cases that were brought against the Commission.
18 All of those were dispended with as we went
19 through the Department of Justice and received
20 pre-clearance.
21

22 ASSEMBLYWOMAN DESTITO: I have one
23 more question and then I'll ask my colleagues if
24 they have any.

25 Could you just explain to us the

1 appointment process for the Commission?

2
3 MR. LYNN: Absolutely. It is an
4 affirmative application process, which means that
5 in years ending in one after the census, members
6 of the State of Arizona who meet the criteria,
7 and there is a list of criteria. For example,
8 you cannot have been a paid lobbyist for three
9 years prior to your submitting an application.
10 You have to have been registered to vote in the
11 State of Arizona for at least three year prior
12 to. You submit an application to the Appellate
13 Court Commission, the same Commission that makes
14 recommendations to the governor for appointments
15 to the Appellate and Supreme Courts of the state.

16 That Appellate Court Commission takes the
17 applications, and again there were three hundred
18 and eighteen of them this time around, and
19 distills them down to a list of twenty-five. Ten
20 republicans, ten democrats and five other, and
21 the other could be libertarian, could be
22 independent, third party, green party, whatever.

23 That list is circulated and that circulation
24 goes to the legislative leadership. In our state
25 we have house and senate rather than assembly and

1 senate. The house leadership gets the first
2 pick, the Speaker of the House is the first pick,
3 the Minority Leader of the House is the second
4 pick, the President of the Senate is third pick,
5 the Minority Leader in the Senate is fourth pick.
6

7 As you might imagine that creates two
8 republicans and two democrats. Those four
9 appointed members of the Commission then convene
10 the first meeting of the Commission; the four of
11 them, and their first order of business is to
12 interview the five other on the list. That's a
13 public interview process. It's quite an
14 interesting show if you've never been in a public
15 interview. I'm sure those of you who run for
16 office and hold office have been in many, but for
17 some of us citizens it was an interesting
18 experience.

19 With press and people present we were
20 interviewed for the job and then the group
21 convened in regular session and voted to select
22 the chair. I was selected on the first ballot
23 unanimously, all four votes. Castro would be
24 proud.

25 ASSEMBLYWOMAN DESTITO: So there

1 can't be an officer of a political party, a
2 registered lobbyist or an officer of the
3 candidates campaign committee. Is that my
4 understanding?
5

6 MR. LYNN: For three years prior to
7 the application.

8 ASSEMBLYWOMAN DESTITO: For three
9 years prior to the application.

10 MR. LYNN: That is correct, and we
11 serve a ten-year term. We serve for the same
12 decade as the census. When the first member of
13 the next Commission is selected we then are
14 relieved of duty and we are precluded for running
15 for Arizona political office for the entire term
16 of our service and three years thereafter.

17 ASSEMBLYWOMAN DESTITO: Paid
18 position, non-paid position?

19 MR. LYNN: We're getting a - I'm
20 sorry; this is a non-paid position, volunteer.
21 We're paid nothing. We do receive reimbursement
22 for actual expenses, according to state
23 reimbursement guidelines.

24 I might add, Madam Chairman, to date I've
25 logged about thirty-five hundred hours of

1 volunteer time as Chairman of the Commission, and
2 were it not for a very, very understanding
3 employer I might not be able to serve.
4

5 ASSEMBLYWOMAN DESTITO: Thank you.
6 I'm going to ask Adriano Espaillat.

7 ASSEMBLYMAN ESPAILLAT: Thank you for
8 coming from Arizona. I want to hear about the
9 challenges that you faced with regard to
10 complying with compagnets, and also at the same
11 time, protecting communities of common interest
12 and making sure that the process was not
13 retrogressive.

14 MR. LYNN: I'm trying to determine
15 the best way to answer that question because all
16 of the goals are interdependent. There are ways
17 of measuring compactness and contiguity. There
18 are actually mathematical formulas that can be
19 applied to districts to determine whether or not
20 they need a test. There are several tests for
21 each of those.

22 With respect to retrogression, it's very
23 clear that the Commission understood from the
24 beginning that the challenge in Arizona was going
25 to be comply with the Voting Rights Act first

1 after you've complied with One Person One Vote,
2 and have that be the overriding goal of the
3 Commission's work, because that's the trump card.

4 The Department of Justice could come in and tell
5 you, I'm sorry these districts won't work, you
6 must do something different. With all of the
7 other goals we are the determining factor as to
8 whether something is compact and contiguous
9 enough and so on. So, we were very mindful of
10 our duty to not violate the Voting Rights Act,
11 and in fact, with some minor adjustments to the
12 legislative map, both of our maps were pre-
13 cleared rather easily by the Department of
14 Justice. We did not get into a long or
15 protracted discussion with them. They came back
16 with an objection early on to our legislative
17 map. We remedied that within a month or so and
18 resubmitted and that map was pre-cleared.

19 In that regard the department did not see
20 any difficulty as far as the Commission was
21 concerned in achieving the goals of
22 retrogression.
23

24 ASSEMBLYMAN ESPAILLAT: At the end of
25 the day was your effort one that yields an

1 increase in representation from groups that have
2 been traditionally excluded realized?

3
4 MR. LYNN: There's not question that
5 in both the state Legislature and in congress we
6 increased the number of minority representatives
7 in each of those bodies. That was part of our
8 goal.

9 ASSEMBLYMAN ESPAILLAT: By how much?

10 MR. LYNN: Well, we doubled it in the
11 case of the congressional seats. We had one
12 minority representative prior to and have two
13 now. I might add that there were minority
14 candidates who were running very, very well in
15 two other districts where they were not
16 successful, but it was certainly not because they
17 were not disadvantaged in some way. They had the
18 opportunity to be elected as well.

19 In the Legislature I'm not exactly sure.
20 We have thirty legislative districts, and by the
21 way, our districts are multimember districts,
22 which means that we have thirty districts in the
23 state. Each one elects one senator and two
24 representatives, so it's the same district.
25 Those thirty districts I believe increased the

1 representation in the Legislature by either one
2 or two seats as well.

3
4 ASSEMBLYMAN ESPAILLAT: What about
5 women?

6 MR. LYNN: We have always had a very
7 healthy representation of women in the state
8 Legislature. I don't know the exact numbers of
9 the top of my head, but the congressional
10 delegation had been all male heretofore, and I
11 think come one month from today we'll have at
12 least one woman in congress.

13 ASSEMBLYMAN ESPAILLAT: My final
14 question. I want to inquire about residents
15 versus voters and whether that played a factor.
16 I know that in your state you have a sizeable
17 population that are legal residents but are not
18 voters and I wanted to know if in your mapping
19 efforts how that play in?

20 MR. LYNN: Let me try to answer that
21 in a couple of ways. First of all, for the
22 purposes of equal population we used the census
23 figures that showed population, which includes a
24 variety of folks. With respect to the efficacy
25 of the districts, their ability to function

1 politically, we used voter registration data
2 primarily, and so that would separate our voters

3
4 ASSEMBLYMAN ESPAILLAT: Did you use
5 the voter registration information to also
6 determine "Communities of Interest" in not being
7 retrogressive?

8 MR. LYNN: We used it to supply
9 information to the Department of Justice on the
10 issue of retrogression. We did not use it per
11 say to determine "Communities of Interest"
12 because we had a rich amount of information that
13 had come to us through testimony about how those
14 communities might be aggregated, or separated.
15 Interestingly enough, even though there were some
16 large "Communities of Interest", the Hispanic or
17 Latino community of interest being one, when we
18 finally got to the place where we had finished
19 mapping and the maps were approved, we had a
20 challenge some time ago to the congressional maps
21 that we had, and Maldef come into that suit on
22 our side and helped us defend our map. We were
23 very pleased about that because that signaled
24 that they at least felt that we had given proper
25 consideration to the minority community.

ASSEMBLYMAN ESPAILLAT: My concern is that traditionally some of the districts that have yield representations from communities have been traditionally excluded, are spider web districts. You know, you go around picking population in different places in communities of common interest. I wanted to know whether or not that the efforts would be compact and contiguous hurt that other goal.

MR. LYNN: I think if you look at our districts they are amazingly compact and contiguous, with the exception of one congressional district, which I would be more than happy to explain, they are, in anybody's definition, compact and contiguous district. We don't have spider webs, we don't have neuro connectors, and we don't have districts that run along canals or rivers or down rights of way to pick up other populations. It simply does not happen with the exception of one congressional district and I'd be happy to explain that if you're interested.

ASSEMBLYWOMAN DESTITO: Go ahead please.

MR. LYNN: Let me explain that one. If you look at the congressional map of Arizona you will notice, in the northern part of the state, what appears to be a key and a keyhole. What that is, there is a large district across the top of the state and within that district there is a landmass that is connected with a small connector to the next congressional district. This arises out of a dispute between the Navajo nation and the Hope tribe. Those two Native American populations have been at odds over land, water and really the very existence of the Hope tribe for many, many years.

All of those issues are federal. They are not state issues. Therefore, these two groups of Native Americans find themselves in the same legislative district, but for the purposes of the federal districting it was very clear through testimony that they did not wish to be together and did not feel that their "Communities of Interest" could be represented by the same person.

Therefore, the Hopes, seven thousand strong, within the Navajo Nation of over one

1 hundred thousand voters commanded the Commission,
2 if you will, or requested very forcefully, to put
3 them with any other congressional representative
4 than the one that would represent the Navajo. We
5 complied with that by creating a connector from
6 the Hope Tribe, which is completely surrounded by
7 Navajo lands, through the Navajo Nation,
8 carefully avoiding as many people as we could. I
9 believe the connector only disenfranchises about
10 eleven individuals. We therefore connected that
11 to the next congressional district that was
12 available.
13

14 ASSEMBLYMAN ESPAILLAT: One last
15 question. With regards to competitiveness, you
16 basically said that there was no substantial
17 increase in turnout, or change in turnout both in
18 the primary process and the general elections,
19 correct?

20 MR. LYNN: I cannot tell you today
21 that our work directly affected a dramatic
22 increase in turnout. I cannot make that
23 connection.

24 ASSEMBLYMAN ESPAILLAT: Thank you.

25 ASSEMBLYWOMAN DESTITO: Mr. Gianaris

1 please.

2
3 ASSEMBLYMAN GIANARIS: Thank you
4 Madam Chair. It's good to see you again Steve.

5 MR. LYNN: Nice to see you sir.

6 ASSEMBLYMAN GIANARIS: I also have a
7 question to follow-up on Assemblyman Espaillat's
8 questions with regard to the interplay between
9 your Commission and the Voting Rights Act,
10 because here in New York, especially in New York
11 City, we pride ourselves on our diversity and the
12 importance of having representation from groups
13 that have been traditionally disenfranchised and
14 we want to make sure that whatever we're doing
15 here does not take away in any respect from those
16 goals.

17 If I understand your testimony correctly,
18 the Voting Rights Act concerns are supreme to any
19 of the concerns that may be contained in the
20 legislation or the work of your Commission. Is
21 that correct?

22 MR. LYNN: Mr. Gianaris the Voting
23 Rights Act and the Constitution are the first two
24 criteria that we deal with and they are superior.
25 Both in terms of the way the laws are written

1 and in terms of the impact on the Commission vis-
2 à-vis either a lawsuit or an objection by the
3 Department of Justice.
4

5 ASSEMBLYMAN GIANARIS: So have you
6 found that your work, in any way - I mean it
7 sounds to me like your testimony's actually
8 enhanced the representation of those groups, but
9 have you found in any way that the establishment
10 of this independent Commission has retracted from
11 the goals of the Voting Rights Act in any way?

12 MR. LYNN: Mr. Gianaris, I would
13 suggest very strongly that it has not and, in
14 fact it has increased minority participation and
15 representation at both the national and state
16 level.

17 ASSEMBLY GIANARIS: So in your
18 testimony there's inconsistent about the goals of
19 your Commission and the Voting Rights Act. In
20 fact, it seems that they work very well together.
21

22 MR. LYNN: Again, with respect to
23 these goals in their priority order, they worked
24 fine. I do want to make the point, and I want it
25 to be clear because in the State of Arizona, as I

1 said in my testimony, the expectation was that we
2 would be able to create many more competitive
3 districts than the Legislature. I know this is
4 going to be a longer answer than you want, but
5 I'd like to give you one example of how that
6 worked in a practical sense.

7
8 In one stage of our lawsuit, trial court
9 judge asked us to remap, placing competitiveness
10 higher in priority order than it appears in the
11 law. That particular judge, who was reversed at
12 the appeals court level, was trying to elevate
13 competitiveness as a goal above other goals
14 within the constitution.

15 Again, he was reversed, and it's very
16 clear that that was not the call of the public,
17 but the public expected more competitive district
18 out of the Commission without having read the
19 nuances within the law. Let me explain. So the
20 judge ordered us to draw a map that was the most
21 competitive map we could, and this was on the
22 legislative side, not the congressional side.

23 Remember, we have thirty legislative
24 districts. We asked our consultants to draw a
25 map with the most number of competitive districts

1 they could manage, with equal or nearly equal
2 population. They drew a map that had twenty-
3 three out of thirty competitive districts using
4 that very narrow definition of competitiveness.
5 Then we asked our consultants to add back in the
6 other criteria we also had to deal with.
7

8 The first of those was compliance with
9 the Voting Rights Act, and when the consultant
10 added in the Voting Rights Act criteria that were
11 required to satisfy the Department of Justice for
12 non-retrogression, we went from twenty-three
13 competitive district to five. That's the impact
14 of the Voting Rights Act in Arizona.

15 So, when we did the mapping, five or six
16 competitive districts are about all your going to
17 get in that legislative cluster. That's what we
18 achieved and that's based on a true
19 implementation of the Voting Rights Act.

20 ASSEMBLYMAN GIANARIS: I have one
21 quick question about the way you calculate
22 competitive districts. You said it's fifty-three
23 to forty-six is kind of the range you used. Is
24 that partisan registration?

25 MR. LYNN: No sir. In the formula

1 for "judge it", which is a complex formula which
2 I cannot explain to you, we had a consultant who
3 was there for only the purpose of judging whether
4 or not our districts were competitive, and the
5 "judge it" formula creates a percentage ratio.
6 The most competitive district you could possibly
7 draw within the "judge it" formula comes out
8 fifty fifty.
9

10 ASSEMBLYMAN GIANARIS: Fifty of what
11 versus fifty of what?

12 MR. LYNN: I can't tell you what
13 because it's this complex formula that takes into
14 account voter registration, voter turnout in the
15 last three elections, whether or not there is an
16 incumbent and all of those are weighted in a
17 particular way to come out with, at the end of
18 that process, a percentage in the district.

19 ASSEMBLYMAN GIANARIS: That sounds
20 like they're trying to predict the outcome of an
21 election.

22 MR. LYNN: That is correct, so
23 they're trying to predict the outcome based on
24 past history and registration, and performance,
25 and so the most competitive district in the

1 future that you could draw would be a fifty fifty
2 district, and we simply took three and a half
3 percent on either side of that and said that if
4 it fell within that range, our consultant could
5 tell us with ninety-five percent confidence that
6 it would be a competitive district.
7

8 ASSEMBLYMAN GIANARIS: Thank you.

9 ASSEMBLYWOMAN DESTITO: Ms. Galef:

10 ASSEMBLYWOMAN GALEF: I'm very glad
11 to meet you and very glad that you're here to
12 offer testimony.

13 Can I first start out by asking you why
14 do you think that the Arizona voters are - how
15 did it become a constitutional amendment that you
16 have versus a legislative proposal?

17 MR. LYNN: Arizona, as you may know,
18 is modeled on the Oklahoma constitution model,
19 which allows for initiative and referendum, and
20 in this case it was an initiative by the voters
21 for a constitutional amendment. Petitions were
22 circulated, sufficient signatures were gathered
23 and it was put on the ballot and the people of
24 Arizona voted to amend the constitution to create
25 the Commission.

ASSEMBLYWOMAN GALEF: Could they have asked for something other than a constitutional amendment through a proposition?

MR. LYNN: In this case, no, because I believe constitutionally the role of redistricting is given to the Legislature and it would need to have been taken away, or be separated out.

ASSEMBLYWOMAN GALEF: In the constitutional amendment that you passed, which I haven't seen, is it very specific about the choosing of the delegates, what their backgrounds are? You also said that you can't run for political office for three years. Is that all in the constitutional amendment?

MR. LYNN: Yes, it is. The requirements for being an applicant are in the constitution. The process for selection is in the constitution and the requirements for running for office post-service are in the constitution.

ASSEMBLYWOMAN GALEF: Can I ask you about the difference, the variation of numbers of people within each of the districts, congressional districts versus legislative

1 districts? Is there a percentage that you're not
2 exactly equal?
3

4 Mr. LYNN: Ms. Galef, let's be clear.

5 We're talking about two thousand census data,
6 which obviously now is quite out of date and
7 these numbers no longer are in effect. At the
8 time we did the redistricting, remember we have
9 eight congressional districts, our official
10 census data population for the State of Arizona
11 was divisible by eight, and therefore our
12 congressional districts were exactly equal in
13 population. With respect to the legislative
14 districts, again, we felt we had a little more
15 leeway with those than we did the congressional,
16 but we felt that we could only justify a
17 deviation in population if we were attending to
18 one of the other goals. So for example, if we
19 were going to create a district that respected a
20 community of interest, which had been clearly
21 defined by testimony that we had received, we
22 would take the entire community of interest, if
23 it didn't make a huge difference in the
24 population deviation. We tried to keep the
25 deviation among legislative districts within a

1 two and a half percent in either direction. We
2 felt that that would stand review either by the
3 courts or by DOJ, should it be tested.

4
5 ASSEMBLYWOMAN GALEF: And in your
6 process of doing that I'm assuming that towns
7 were divided, or villages, I'm not sure how
8 you're all set up, but that could have happened?

9 MR. LYNN: It could have, but frankly
10 we divided fewer counties and fewer cities than
11 previously redistricting had done. For any
12 incorporated area that was within the population
13 goal of the district, that is to say the city of
14 Phoenix obviously couldn't be a single district,
15 you'd have to have several in them, but for
16 smaller cities and towns outside the metropolitan
17 areas we tried as best we could to take all of
18 the city in the same legislative district as an
19 example.

20 There were a couple of notable
21 exceptions, and one actually resulted in a suit
22 from the city of Flagstaff. The issue from the
23 city of Flagstaff was that they had a planning
24 area that was much larger than their incorporated
25 area and they had petitioned us to incorporate

1 the entire planning area in the district that we
2 happened to be drawing. The problem was that we
3 had received conflicting testimony from the
4 Flagstaff hearing. While the city of Flagstaff
5 was saying that that planning area was the right
6 way to go, many who testified indicated that a
7 different direction was a more appropriate
8 community of interest for the city of Flagstaff
9 and its commerce, and therefore, it should go in
10 a different direction.
11

12 We didn't necessarily come down on one
13 side of the other of the argument, but in the
14 final analysis this is a puzzle that has to fit
15 exactly when you're finished. Everyone has to be
16 in a district and every district has to be drawn,
17 so you make decisions based on choices very often
18 and when it comes down to conflicting
19 "Communities of Interest", you utilize your
20 judgment as best you can. We felt that we had
21 enough evidence to put Flagstaff, not with the
22 entire planning district, but with the geographic
23 area that it had been testified to. They filed
24 suit and unfortunately for them, that suit was
25 without merit.

ASSEMBLYWOMAN GALEF: Flagstaff is a very nice place.

MR. LYNN: Yes, a very nice place. My daughter went to college there and I'm very fond of Flagstaff. I'm also very fond of the mayor, and quite honestly, he and I have had this running dialogue because he is a lovely human being and has served very well in the city of Flagstaff, but he was very prominent in our meetings, we became very good friends and in the end I could not give him what he wanted.

The other example I will give you is southeastern Arizona. There's a town, now a small city growing, called Sierra Vista. Sierra Vista's claim to fame is that they are right next to an Army post, Fort Huachuca. Fort Huachuca is the head of the Military Intelligence for the United States, so a lot of defense industries have grown up in that community.

When you start putting districts together we could not put both the fourth and all of Sierra Vista in the same congressional district unless we tied them to a district that was dominated by Tucson. That was okay with them as

1 long as they were kept together. So for the
2 purposes of the district we kept them together
3 based on their testimony that they would like to
4 be kept together.
5

6 ASSEMBLYWOMAN GALEF: Just a couple
7 of other things. When you said had the hearing
8 was that also part of the constitutional
9 amendment that you were required to have public
10 hearing throughout your state?

11 MR. LYNN: No, there was requirement
12 for a particular number of public hearings. We
13 were required by the state's Open Meeting Law to
14 hold our meetings in public and certainly, as
15 part of the public process; you would have a call
16 to the audience. We felt that the most important
17 part of our job was listening before we did
18 anything.

19 As I mentioned in testimony, we actually
20 scheduled a separate round of public hearings
21 before we started our hearings on mapping to hear
22 about "Communities of Interest" specifically, and
23 we used that information to for our map drawing
24 for our first maps, so that many of the
25 "Communities of Interest" were already addressed

1 to some degree in the first draft maps we
2 produced.
3

4 ASSEMBLYWOMAN GALEF: Last question.

5 How do you deal with legislator serving in
6 office today? Was that taken into account when
7 you were doing the redistricting?

8 MR. LYNN: Ms. Galef it was taken
9 into account but with no more weight than any
10 other citizen speaking to us. Therefore, if they
11 wished to testify, and a few did, but some did,
12 we certainly took their testimony along with
13 everyone else's.

14 The legislative groups as well as the
15 congressional groups submitted maps to us showing
16 how districts could be drawn. What was
17 interesting about almost all of these maps was
18 that on further analysis there were things those
19 maps produced that were not talked about when
20 they were submitted, but there were results that
21 were hidden.

22 For example, certain incumbents were
23 drawn out of certain districts and certain other
24 incumbents were drawn into certain districts.
25 Those were not the points made in testimony when

1 the maps were presented, but on analysis those
2 are the kinds of things that we look for. I will
3 tell you that we made two decisions that I think
4 were extraordinarily important. They were not in
5 the law, but we decided to do them. I think it
6 meant a lot to our success.

7
8 The first was, we agreed early on that we
9 could not adopt anybody else's map. We would
10 allow them to inform us, use maps and parts of
11 maps to draw certain districts, but we would not
12 take anyone's map wholesale and adopt it, and the
13 more important corollary to that was, that we
14 agreed early on that even though each of us had a
15 computer and the software available to us that
16 none of the members of the Commission would
17 ourselves draw maps. That meant we didn't own
18 maps, any of us. We instead, instructed our
19 consultants, in open session, to draw certain
20 maps in certain ways giving them instructions as
21 to how maps might be drawn, taking certain things
22 into account and so on. The Commission owned all
23 those maps jointly, and therefore no one was
24 promoting his or her own map. That was not
25 required; it was just a very good thing to do

1 with a group of people who were trying to reach a
2 consensus.
3

4 ASSEMBLYWOMAN DESTITO: Ms.
5 Rosenthal?

6 ASSEMBLYWOMAN ROSENTHAL: Thank you
7 very much. I have a question about impact on
8 female representation and women are not protected
9 under the Voting Rights Act. Tell me if this is
10 correct that women candidates fared less well in
11 state elections after this redistricting?

12 MR. LYNN: I don't know that that's
13 the case. To be perfectly candid I have not done
14 an analysis on gender outcomes in terms of seats
15 held. I will tell you however, that Arizona has a
16 very robust, and I guess that's the right word,
17 primary process. I do know that periodically
18 incumbent legislators are challenged from extreme
19 positions in their own party for seats in the
20 Legislature. That may have, and I don't know the
21 numbers Ms. Rosenthal, but that may have
22 accounted for some of the women who had been
23 elected not continuing to serve. I do think we
24 still have a fairly healthy representation of
25 women in the Legislature. The congressional

seats have not been traditional held, but as I said one will be, I believe come November.

ASSEMBLYWOMAN ROSENTHAL: Can you draw from your experience on this Commission how women in general might fair, or is there no difference, given all the other criteria?

MR. LYNN: I believe that women in Arizona have an absolutely equal opportunity in each of these districts, and it would more relate to their party registration, or to their position on issues as opposed to their gender.

I believe that there are active candidates in both parties in many districts throughout the state and, again, politics has always been about people and ideas and campaigns and it is somewhat about registration when it gets down to past the primary season and into the general election. I don't know if that's a sufficient answer, but it's the best I can give you.

ASSEMBLYWOMAN ROSENTHAL: Okay, that's all. Thank you.

ASSEMBLYMAN ESPAILLAT: How do you count your prison population?

1 MR. LYNN: I guess you're going to
2
3 hear some more testimony about that today. As
4 with most states the prison population is counted
5 as residents in the census even though they don't
6 have a franchise and are generally from
7 elsewhere.

8 Arizona has a number of prisons both
9 federal and state scattered around the state and
10 we took those prisoners into account with respect
11 to overall population numbers. We did not
12 disaggregate them. I suspect that a good case
13 could be made to do so, and particularly where it
14 would have an egregious effect on a district that
15 might be the right approach state-wide. In our
16 case, again because we have these vast areas of
17 land interrupted by groups of people, the impact
18 of the prisons on any one district was not
19 particularly large. The prisons are scattered in
20 such a way that they don't produce an enormous
21 effect in any one district.

22 ASSEMBLYMAN ESPAILLAT: What about
23 students, university students?

24 MR. LYNN: Students of course are a
25 different matter because even though they may

1 claim a residence other than where they are going
2 to school, they are perfectly eligible to
3 register to vote where they are if they've met
4 residency requirement. In that case we treated
5 them as voters where they had registered.
6

7 ASSEMBLYMAN ESPAILLAT: Did you do
8 anything to protect incumbency?

9 MR. LYNN: No. In fact, it's
10 prohibited, and in the law we could neither know,
11 nor could we use the place of residence of
12 incumbents or candidates for the purposes of map
13 drawing.

14 Let me give you an example. We were
15 holding a public hearing on the south portion of
16 Phoenix and one of our calls to the public
17 created a speaker who came up and was about to
18 read into the record the home address of a
19 sitting congressman. I stopped that speaker in
20 mid sentence, I asked the people in charge of the
21 hearing to explain to the person speaking that we
22 could neither know, nor use that information and
23 that speaker then continued without putting that
24 on the record. That was the only attempt anyone
25 ever made to give us the residency of an

1 incumbent.

2
3 That doesn't mean that one or more of us
4 on the Commission wouldn't know, or have been at
5 the home of an incumbent, and know where that
6 person was. Clearly, any information that we
7 brought to the job we can use in doing our work,
8 but we did not, and I can say this with all
9 confidence, we did not draw districts, we did not
10 tell our consultants to draw districts, that had
11 any bearing on incumbents whatsoever.

12 ASSEMBLYMAN ESPAILLAT: In your
13 efforts did any districts have two incumbents in
14 them, facing each other?

15 MR. LYNN: Again, in the
16 congressional mapping they did not, and that's
17 partially because of the way the districts had
18 been drawn before, which was kind of a hub and
19 spoke arrangement in Phoenix, which meant that
20 they were in very different parts of the state to
21 begin with. With respect to the legislative
22 districts, there were several incumbents that
23 were placed in the same district and had to run
24 against one another.

25 ASSEMBLYWOMAN DESTITO: I have a

1 couple more questions. Could you explain the
2 background of the Commission members in general?

3 Who actually applied and who actually became a
4 member?
5

6 MR. LYNN: I'm not sure that I can
7 give you all three hundred and eighteen who
8 applied.

9 ASSEMBLYWOMAN DESTITO: No, I don't
10 mean who applied, in general.

11 MR. LYNN: In general. Let me do this
12 in order. The Vice Chair of the Commission is a
13 woman from Phoenix. She had not been a political
14 activist that we know of. She had been active in
15 the community and a number of endeavors. I
16 should tell you that no member of the Commission
17 is other than Angelo, and that created,
18 initially, a lot of suspicion. I received a
19 number of phone calls and a visit from minority
20 activist groups to decry the fact that there was
21 no minority representation.

22 Understand that those who made the
23 selections, the leadership and the Legislature,
24 had the opportunity to select minority
25 representatives, they chose not to. When I got

1 there the other four were already chosen, we
2 happened not to be representative of the state,
3 but not only the support of Maldef, but also all
4 of the other minority and community rights
5 activists, who eventually became very supportive
6 of the work we did when we finished our mapping,
7 the activists said, you've done your work, now
8 its our job to go talk to the Department of
9 Justice about the maps you've drawn and help.
10 So, many of them were supportive.
11

12 My Vice Chair is from Phoenix, she is an
13 activist in the community, but not particularly
14 politically active and she is not employed. Her
15 husband is a retired physician.

16 Another member from Phoenix is an
17 attorney. He is politically active, but not in
18 any of the restricted ways. He is often been one
19 of those observers who goes internationally to
20 look at voting rights violations in other
21 countries. He, in fact, was one of the observers
22 in the Ukrainian elections some years ago when
23 they elected their democratic leadership.

24 The third member of the Commission is
25 from Tucson. He is a landscape architect and a

1 planner. He had not been politically active in
2 any great way, although he may have been active
3 in some campaigns as a contributor. He's
4 somewhat an obscure choice, we thought, because
5 he wasn't a big name so to speak in the community
6 in any particular way.

8 The fourth member of the Commission is
9 from a rural part of Arizona. He is in the
10 mortgage business. He too, had not been
11 politically active in a great way other than in
12 local elections up in the northeastern part of
13 the state, an area called the White Mountains,
14 which is a vacation haven for people in Phoenix
15 and Tucson.

16 ASSEMBLYWOMAN DESTITO: And yourself?

17 MR. LYNN: I am a utility executive
18 from Tucson. I had been active in all sorts of
19 political activities, most of them revolving
20 around issues and opposed to candidates, but in a
21 former life I had an advertising, public
22 relations firm and have run campaigns for
23 republicans, democrats and independents.

24 ASSEMBLYWOMAN DESTITO: Did the
25 constitutional amendment prohibit incumbents from

1 moving into districts if they were found to be at
2 the census time, whether it was two thousand and
3 two, if they found themselves in a district with
4 another incumbent, could they move? How was
5 incumbency treated?
6

7 MR. LYNN: Madam Chair, there's not
8 restriction with respect to this particular
9 constitutional amendment on incumbents changing
10 location. As you know, there's no requirement
11 for congressional elections. You can run from
12 any district you wish. For statewide office,
13 however, there is a residency requirement and
14 that requirement is already exists in the law and
15 has to be met.

16 Again, when these maps were first drawn,
17 we didn't give incumbents time to move. They
18 would not have been able to meet residency
19 requirements because we were late in getting the
20 maps done for the two thousand and two elections.

21 Once that cycle passed, my house is for sale
22 just like yours, so whatever happens after two
23 thousand and two is up to them.

24 ASSEMBLYWOMAN DESTITO: Mr. Benedetto.

25 ASSEMBLYMAN BENEDETTO: Mr. Lynn, how

1 did everybody get along on this committee? Were
2 there any fights; was there a fairly agreeable
3 process?
4

5 MR. LYNN: Mr. Benedetto, good
6 morning. It was fairly agreeable and the final
7 vote on maps were four one. Almost all of the
8 big decisions that we made up to the final map
9 were made on a five zero vote.

10 I, as Chair, tried to seek consensus
11 everywhere I could. It became clear at some
12 point that we were not going to have a full
13 consensus on the final map. I don't need to go
14 into a lot of detail about that, but it was clear
15 to all of us that one person's vote was not going
16 to be joining the rest of us. Remember the
17 makeup of the Commission, two republicans, two
18 democrats and an independent, and the final vote
19 was four one. I will tell you that while there
20 were discussions, and some of those discussions
21 were what I would call spirited discussions, we
22 did not have fights, nobody pouted, nobody
23 threatened to pick up their marbles and go home.
24 There was no horse trading because the Arizona
25 open meeting law prohibits hub and spoke

1 discussions among Commissioners, which means that
2 you can't talk to anybody else about these issues
3 except in open session, or you can have one
4 conversation with one other member of the
5 Commission, but you can't then repeat that
6 conversation to a second member of the Commission
7 because that would constitute a majority. With
8 that overhanging our operations, and the fact
9 that, again, we decided early on not to draw our
10 own maps, I believe that we achieved as much
11 consensus as was possible throughout the process.

12
13 ASSEMBLYMAN BENEDETTO: And how did
14 you become the Chairperson? Was it the selection
15 process that they chose you?

16 MR. LYNN: Yes. As the four members
17 that had previously been chosen gathered for the
18 first time, they interviewed the five who were on
19 the list to be potential chairs. That meant those
20 five people who were neither republican nor
21 democrat. Actually, one withdrew before the
22 interviews. Smart person, he knew that the time
23 commitment was significant. I was not as smart
24 and actually went through the interview process
25 and then those members caucused and voted and I

1 was selected on the first ballot, unanimously by
2 the other four. And they've regretted it ever
3 since.

4
5 ASSEMBLYMAN BENEDETTO: Lastly,
6 knowing what you know now, would you do it again?

7 MR. LYNN: Mr. Benedetto, knowing
8 what I know now, I would again do it once. Is
9 that a fair answer sir? To be truthful, I would
10 love to do this again. I think public service is
11 extraordinary. I applaud all of you for offering
12 yourselves in public service.

13 I have had more enjoyment out of this job
14 than I could tell you, because I've been to parts
15 of the state, and I thought I know the state,
16 that I had never been to before. I have met
17 people in parts of the state that I had never met
18 before. I have friends now in every county of
19 the state where I can go and visit people that
20 I've met through this process. It was an
21 extraordinarily enlightening process and I can
22 tell you without fear of any contradiction that
23 all five members of the Commission took our
24 constitutionally requirement very, very
25 seriously. We took an oath to hold this office.

1 This is a sobering experience for anyone who has
2 not done so, and many times we've reflecting on
3 that oath, as we were about to make very serious
4 and very impactful decisions with respect to the
5 people in the State of Arizona. Those who
6 criticized us have never criticized our
7 integrity, our ability to listen and to take into
8 account what citizens had to say to us. The only
9 citizen that has lasted as long as it has through
10 the suits that were filed was that we did not
11 consider competitiveness early enough, or
12 strongly enough. The Court of Appeals has
13 already ruled that, in fact, we did give it
14 proper weight because it is the last of the
15 criteria, and it is the only one that is
16 subordinate to all the others.

18 ASSEMBLYWOMAN DESTITO: Galef?

19 ASSEMBLYWOMAN GALEF: As you look at
20 the constitutional amendment that was passed, if
21 you could go back would you make any other
22 changes in what you're doing, maybe the number of
23 Commissioners? What would your recommendations
24 be?

25 MR. LYNN: That's a great question.

Thank you for asking it.

There are those who are looking at the possibility of modifying the law before the two thousand and ten census. I should mention, in the State of Arizona when an initiative does pass, there is a five-year limit before any additional changes can be made, to give it time to operate properly. So, it is now eligible for some modification, if that were to be the will of the people.

In this case, I would make some serious adjustments. The first and foremost would be to have the work of the Commission immediately be reviewed by the State Supreme Court for constitutionality. Not to have to go through the court process of lower courts, appellate courts and the Supreme Court.

Just to explain that a little bit, we were given six million dollars to do our work. That too was prescribed in the constitutional amendment. We completed the mapping process for approximately three point two million dollars, half of the prescribed amount. The rest was spent on litigation expense and I believe it

1 would be a great boon to any Commission that is
2 set up to have their work immediately and
3 specifically reviewed by the State Supreme Court
4 so that lengthy litigation would be avoided.
5

6 Secondly, I believe you get out of the
7 process what you expect out of the process, and
8 if you expect competitiveness, I would put as few
9 requirements on the Commission otherwise as you
10 legally could. Let me explain that.

11 I've said before, both in testimony and
12 in answer to questions, that implementing the
13 Voting Rights Act in and of itself has a
14 significant impact on your ability to draw
15 competitive districts, particularly in a
16 republican leaning state. I know that New York
17 is a democrat leading state and, like California,
18 would have a little better time of it because of
19 that. However, it is impactful, nonetheless.
20 When you start talking about "Communities of
21 Interest" beyond what you might otherwise see in
22 geographic or political boundaries that are
23 already established, in counties, if you have
24 counties, cities, towns, villages, whatever, and
25 those considerations for "Communities of

1 Interest" are superior in nature to the
2 competitiveness goal, you must take those into
3 account where you do no detriment to those goals.
4

5 That's how our law is written.

6 So, if you want competitiveness don't
7 constrain competitiveness in your language. Make
8 it a high priority and make it unobstructed, as
9 much unobstructed as you can.

10 When each of us was selected or elected
11 to the positions we held on the Commission, each
12 of us, all five of us, made public statements to
13 the fact that one of our personal goals was to
14 increase competitiveness in elections. We all
15 believed that to be a noble calling. Then we
16 were briefed by our counsel about how the law is
17 structured and how it works. By the way, the
18 Attorney General in the State of Arizona does not
19 represent us, because that is an elected public
20 office with a political bent. We have private
21 counsel of both republican and democrat, so we
22 have one of each and they collectively said, this
23 is how the law is written and this is how it is
24 to work. All of us felt constrained in drawing
25 competitive districts because of the way the law

1 was put together. So my admonition would be,
2 again, if you want competition elevate it as a
3 goal and make it as unfettered as you possibly
4 can.
5

6 ASSEMBLYWOMAN DESTITO: Thank you
7 very much for giving us your insight. Thank you
8 for traveling here to be with us.

9 Next we will call Dr. Ernest Reock.
10 Professor Emeritus, Rutgers's University Center
11 for Government Services. Thank you Dr. Reock.

12 DR. REOCK: Thank you. Good morning.

13 My name is Ernest Reock. I retired in nineteen
14 ninety-two from the Rutgers University faculty
15 after having served since nineteen sixty as the
16 Director of the Center for Government Services.
17 The center conducts research on governmental
18 problems, provides training programs for persons
19 in state and local government and offers
20 technical assistance to public agencies and
21 citizen groups.

22 I was on the staff of the nineteen sixty-
23 six state convention that drafted the current
24 provisions in the New Jersey State Constitution
25 for reapportioning the Legislature. I have

1 served as an aide to the public member of the
2 state apportionment Commissions in nineteen
3 eighty-one, nineteen ninety-one and two thousand
4 and one.
5

6 Prior to nineteen sixty-six, the New
7 Jersey Legislature consisted of a state senate
8 with one member from each of the state's twenty-
9 one counties, regardless of their populations,
10 and a general assembly of sixty members
11 apportioned among the counties in proportion to
12 their population, with at least one member from
13 each county. The county delegations were elected
14 at large in the county, sometimes with as many as
15 twelve members.

16 During the nineteen sixty's, litigation
17 resulted in this plan of representation being
18 declared unconstitutional, and the New Jersey
19 Supreme Court ordered that a Constitutional
20 Convention be held to design a new plan. The
21 plan prepared by the Convention, and approved by
22 the people in November nineteen sixty-six,
23 underwent numerous legal challenges over the next
24 seven years. I will add here that if you want to
25 find out how the New Jersey Legislature is

constructed don't read the State Constitution because it has been substantially modified by the court decisions and the Legislature has never gotten around to updating the language in the constitution. Ultimately, as a result of these court decisions, that state has settled on a plan of forty legislative districts, with each district electing one state senator and two members of the General Assembly. Districts must be relatively equal in population, generally with less than a ten percent difference in population between the smallest and the largest districts. The traditional requirements for contiguous and compact territory are repeated in the Constitution, and municipalities may be divided by district boundaries only if they have more than one fortieth of the state's population. Incidentally, the entire geographic area of the state is covered within corporate municipalities. Another constitutional provision limited the number of fragments into which a large municipality might be divided. This limit was discarded by the Supreme Court in two thousand and one, after having been ignored since the

1970s.

3 The unique feature of the constitutional
4 language, which has continued in effect to the
5 present time, was not modified by those court
6 decisions, is the process for drawing the
7 district boundaries. By November fifteenth of
8 every census year, each of the state chairpersons
9 of the two major political parties is required to
10 appoint five members to an Apportionment
11 Commission. The bipartisan ten-member Commission
12 is directed to complete the work of establishing
13 the forty legislative districts by February one
14 of the year following the census or within one
15 month of the receipt by the governor of the
16 official decennial census results, whichever is
17 later. If the Commission fails to meet this
18 deadline, or it declares a stalemate prior to
19 that time, the Chief Justice of the State Supreme
20 Court is directed to appoint an eleventh member
21 to the Commission, which then has one additional
22 month to complete its work. In practice, since
23 the early nineteen seventies, the Commission has
24 always stalemated, and the eleventh or "public"
25 member has been appointed.

1 Since New Jersey holds off-year
2
3 elections, with the entire Legislature up for
4 election in the year following the census, the
5 process necessarily is very compressed. Final
6 census figures seldom arrive before early
7 February, and sometimes not until March in the
8 year ending in a one. State law requires that
9 the county clerks be notified of legislative
10 offices to be filled by sixty days before the
11 primary election, which, in recent years has been
12 held in mid-June. Thus, as best, about five
13 weeks are available for the Commission to work,
14 and some of that time will elapse before the
15 public member may be appointed.

16 Nevertheless, the process has worked
17 surprisingly well. A full set of forty districts
18 has been determined within the allotted time
19 after each of the last three decennial censuses.

20 No plan of districts will make everyone happy,
21 and there is a general tendency, particular among
22 the press, to describe every plan as a
23 "gerrymander". While one party or the other
24 usually has been unhappy with the results
25 (republicans in nineteen eighty-one, democrats in

nineteen ninety-one, and republicans again in two thousand and one), I believe that the districts have been reasonable fair to both parties. One measure of the procedure's acceptance is that similar provisions were placed in the State Constitution in nineteen ninety-five for the redrawing of congressional districts, and corresponding statutes now follow a similar pattern for the designation of electoral districts for county governing bodies and for municipal wards where these forms of government have been adopted by the local voters. In fact, New Jersey may be the only state that has removed the responsibility for drawing the boundary lines of representative districts at all levels of government entirely from elected legislative bodies, and substituting bipartisan boards with a tie breaking mechanism. This does not mean that legislators are not involved. Members of the Legislature may, and are, appointed to the Apportionment Commission. In fact, the legislative leadership of both parties usually is quite evident among the Commission's members.

While I think the plan has been very

1 successful, there are some problems. A great
2 deal depends on the eleventh or public member of
3 the Apportionment Commission. I have already
4 alluded to the short time frame in which the
5 Commission can work. This is due largely to the
6 use of off year elections, rather than the
7 redistricting procedure itself. The public
8 member enters the process after the party
9 delegations have been functioning for at least
10 several weeks. More likely, they and their
11 staffs and consultants will have been preparing
12 for months. If the public member is not selected
13 early in the process by the Chief Justice, there
14 will be little time to prepare to function with
15 real independence. If the public member is
16 forced into the position of choosing between two
17 highly partisan plans, either through time
18 pressure or because of the lack of independent
19 data sources and technical support, the result
20 will not be in the public interest. Fortunately,
21 the public members who have served have been
22 outstanding, not only in their technical
23 competence, but in their ability to withstand
24 pressure in meetings with the party delegations.
25

1
2 Nevertheless, the Chief Justice must be aware of
3 the demands on the public member, and an early
4 designation, not necessarily in public, is highly
5 desirable.

6 Secondly, there is no assured
7 "institutional staff memory" built into the
8 process. Where redistricting is done by a
9 legislative body, there usually are staff members
10 who have participated before and who will be
11 around after the process ends. There is no New
12 Jersey staff agency charged with making
13 preparations for a coming legislative
14 redistricting; institutional memory exists only
15 on an ad hoc basis. The Apportionment Commission
16 comes into being every ten years and disappears
17 as soon as its work is done. A few of us try
18 informally to fill this void between censuses,
19 but there is no assurance that this will work in
20 the future. On the other hand, the assignment of
21 the full districting responsibility to a short-
22 lived Commission can have some unexpected
23 benefits. The action of the Texas Legislature in
24 initiating perpetual redistricting could not
25 happen in New Jersey unless the constitution were

1 to be amended.

2
3 On the whole, I think the procedure now
4 in effect in New Jersey has been very beneficial.

5 Before it was implemented, reapportionment of
6 the General Assembly lagged for decades and was
7 carried out only under threats from the State
8 Supreme Court. The redrawing of congressional
9 districts was so highly partisan, that the U.S.
10 Supreme Court threw out plans. While not
11 everyone is happy with the current procedure
12 every year, none of these events have been
13 repeated.

14 I would be happy to try to answer any
15 questions, or to expand upon my testimony. In
16 addition to my testimony, I've given your staff a
17 copy of a draft paper that is in preparation
18 anticipating the census of two thousand and ten.

19 Lastly, I'll put on my hat as a book
20 salesman and if you'd like to find out about the
21 Constitutional Convention that wrote these
22 provisions, I have written a history of that
23 called "Unfinished Business".

24 ASSEMBLYWOMAN DESTITO: Thank you Dr.
25 Reock and I will put into the record that we do

1 have the paper "Redistricting New Jersey After
2 the Census of Twenty Ten" by Dr. Ernest C. Reock,
3 Jr.
4

5 Thank you for coming here and speaking
6 with us and providing your intelligence on this
7 issue.

8 I'm going to ask some of the same
9 questions because we're trying to determine has
10 voter turnout increased in New Jersey since the
11 nineteen ninety-five reform provisions took
12 effect?

13 DR. REOCK: I think not noticeable,
14 no. I think there are many other things that
15 affect voter registration and participation which
16 have a much greater effect than the redistricting
17 plan we have.

18 ASSEMBLYWOMAN DESTITO: Do you have
19 any idea what the turnout is in New Jersey on
20 these types of elections?

21 DR. ROCK: It varies tremendously from
22 year to year. We have a general election every
23 year. When the top of the ticket is only members
24 of the general assembly, the voter turnout is
25 probably in the neighborhood of forty-five

1 percent. When we get to a presidential year it
2 will go up to seventy-five to eighty percent. It
3 will vary in between depending on what the top of
4 the ballot shows. Gubernatorial will go up, I'd
5 have to check figures, I think to the area of
6 sixty-five to seventy percent.
7

8 ASSEMBLYWOMAN DESTITO: Again,
9 competitiveness. Did you see anything, I know you
10 alluded to it in your testimony, but would you,
11 in your opinion, say that there were more
12 competitive congressional races or state
13 Legislature races, and what would you define
14 competitiveness as?

15 DR. REOCK: For the Legislature I
16 really can't answer that. I think that the
17 districts that were drawn last time around were
18 relatively competitive. That's based on my
19 memory that we elected the entire Legislature in
20 two thousand and one, but I think at least
21 between five and ten of the districts actually
22 had split legislative delegations. Remember
23 there are three Legislatures from each district.

24 So, in that sense I think there was some
25 increase in competitiveness, although I'd day

1 that was not a conscious effort by the
2 districting Commission to create competitive
3 districts. As a matter of fact, the two party
4 delegations would have been very happy to go in
5 the precisely opposite direction on that.
6

7 In terms of the congressional districting
8 I think they are far less competitive than they
9 were in the past, because the congressional
10 delegation from New Jersey, my understanding is
11 that, they agreed on non-competitive districts
12 and sold that plan to the Districting Commission.

13 So, the New Jersey congressional districts are a
14 long way from being competitive right now.

15 ASSEMBLYWOMAN DESTITO: Compact and
16 contiguous, would you say that they became
17 compact and contiguous?

18 DR. REOCK: They are contiguous. The
19 only challenge to continuous territory usually
20 comes wherein you have a body of water
21 intervening between parts of the district. There
22 was a challenge which was made after the last
23 redistricting that one district was not
24 contiguous because of an intervening body of
25 water. Since there was a bridge across the body

1 of water the charge was so unreal that the case
2 was never pursued. It never went to trial.

3
4 Compact? Compactness is in the eye of
5 the beholder. I've worked over the years to try
6 to develop objective measures of compactness. I
7 don't think there is any single measure that
8 really is satisfactory. There's no measure that
9 I think the courts have accepted. I think the
10 districts are reasonably compact, but it's a very
11 subjective judgment.

12 ASSEMBLYWOMAN DESTITO: One last
13 question and I'll turn it over to my colleagues.

14 The impact of the Voting Rights Act.

15 DR. REOCK: Well, certainly the
16 Voting Rights Act looms over any redistricting
17 right now. New Jersey is not under the
18 preclearance provision. But that was a major
19 factor in the last redistricting with contests
20 between the two party delegations as to whether
21 the districts should be drawn in one way or
22 another way, depending on their definition of
23 what a majority, minority district was. That
24 actually did go to a court face, challenging the
25 districts that were drawn in two thousand and

one. The Federal Court upheld the districts.

ASSEMBLYWOMAN DESTITO: Thank you.
Mr. Espaillat.

ASSEMBLYMAN ESPAILLAT: How do you
count your prison population in New Jersey?

DR. REOCK: We count them the same
way that the census does. Where they are. That
may change in the future.

ASSEMBLYMAN ESPAILLAT: Your
processes for the last several decades, have they
resulted in a significant increase in communities
of common interest that have been traditionally
disenfranchised?

DR. REOCK: Are you thinking
primarily minority committed?

ASSEMBLYMAN ESPAILLAT: Yes.

DR. REOCK: I think the most recent
redistricting did make a substantial improvement
in representation of minority communities.
That's about all I can say about it.

ASSEMBLYWOMAN DESTITO: Ms. Galef?

ASSEMBLYWOMAN GALEF: Just a couple
of things.

This is all taken place because of a

constitutional amendment.

DR. REOCK: That's correct.

ASSEMBLYWOMAN GALEF: Would it have happened in any other way in New Jersey?

DR. REOCK: I don't think so. The old system of one senator per county, with a general assembly portioned according to population was so deeply embedded in New Jersey practice, that without the court cases of the nineteen sixties, which resulted in the constitutional convention, I don't think it would have happened.

ASSEMBLYWOMAN GALEF: Do you think it helps with redistricting, the fact that you have the senate district and then the general assembly, you have two for each one, does that help the whole redistricting issue, because we're all over the place?

DR. REOCK: I think in one way it makes it a lot simpler because all you have to do is draw forty districts. On the other hand, the districting process, particularly when you have an even party balance in this districting Commission, its so much a matter of give and take. That might very well make sense to have

1 different districts where you can trade off
2 something in one house against the other house.

3
4 ASSEMBLYWOMAN GALEF: You have a ten
5 percent deviation in population. How close has
6 that really transpired?

7 DR. REOCK: That's not specific in
8 the constitution, in fact, the constitution
9 allowed twenty percent deviation and that was one
10 of the reasons why the constitutional provisions
11 were thrown out.

12 The ten percent comes from court cases in
13 the nineteen sixties and early nineteen seventies
14 so that it has come to be accepted as the outer
15 limit. The districts that have been drawn,
16 nineteen eighty-one, they're different by about
17 seven and one half percent; nineteen ninety-one,
18 it was about four and one half percent, and in
19 two thousand and one it was back up to around
20 seven and one half percent.

21 ASSEMBLYWOMAN GALEF: And they've
22 withstood the courts?

23 DR. REOCK: They have not been
24 challenged on a population equality basis. They
25 seem to fit within the range that that court case

2 did specify.

3 ASSEMBLYWOMAN GALEF: You have ten
4 members of the Commission with the eleventh being
5 pulled in at the last minute. Is that a good
6 number?

7 DR. REOCK: Ten? I wouldn't want any
8 more, I think.

9 ASSEMBLYWOMAN GALEF: Would you like
10 less?

11 DR. REOCK: Frankly, since I've gone
12 through it three times now, I'm quite used to
13 having ten. I think that's a reasonable number.

14 One of the things that the New Jersey
15 system does not do is provide well for public
16 input. That does not come from the procedure
17 that's used; it comes from the off-year
18 elections. The whole process has to happen so
19 quickly that it's difficult for the public to
20 have much input. We're lucky if we have two or
21 three hearings during that time that's available,
22 rather than the fifty-eight or so that they had
23 in Arizona.

24 ASSEMBLYWOMAN DESTITO: Dr. Reock
25 thank you very much.

The next witness will be Mr. David I. Wells, an expert on New York and National Redistricting Reform.

In your former life were you a pitcher?

MR. WELLS: No. I had the name long before the pitcher.

My name is David Wells. I've been involved in issues of legislative and congressional districting in New York and other states since the nineteen fifties. I was a leading advisor to the plaintiffs in WMCA vs. Lomenzo, the "one person-one vote" case in which the U.S. Supreme Court overturned this state's constitutional provisions relating to apportionment and districting. I was also the plaintiff in Wells vs. Rockefeller, which overturned two successive New York State congressional redistricting statutes.

I appear here today not to analyze any of the specific proposals recently introduced to make changes in the state's redistricting procedures. Rather, I wish merely to discuss certain general points on the subject.

There are essentially two ways to change

1 the procedures. One I refer to as the "who"
2 approach; the other as the "how" approach. The
3 first would change the redistricting agency.
4 That is, it would transfer the power to
5 redistrict from the Legislature, where it now
6 resides, to some form of non-legislative
7 Commission. The latter would change the rules,
8 which would have to be followed by whatever
9 agency holds the power to draw new districts.
10

11 A large number of the proposals that have
12 been put forth in recent years, and this is true
13 in New York and elsewhere, would establish a
14 districting commission to redraw districts. Let
15 me make it clear that I do not oppose such
16 proposals. I believe such a change might
17 actually constitute an improvement over the way
18 the process is handled to day, and it has been an
19 improvement in some states, although we haven't
20 had the experience in New York State, but I
21 believe it would be major mistake to pin all
22 hopes for redistricting reform on moving the
23 power from the Legislature to a commission.

24 I myself was a member of such a
25 commission, which redrew Cit Council districts

1 here in New York City in the early nineties.
2
3 However, it is my observation, both there and
4 elsewhere, that such a change usually merely
5 transfers the venue in which the same battles are
6 fought out, from one arena to another. As a
7 general rule, persons who are appointed to such
8 commissions merely represent the interests and
9 views of those who appointed them. The transfer
10 of jurisdiction from the Legislature to a
11 commission is a rather poor, unreliable way to
12 affect true redistricting reform. I do not
13 oppose it, but by itself it is not enough. I
14 believe it would be far more effective to place
15 the emphasis on changing the ground rules, which
16 govern the way districts are actually laid out.

17 Such rules need not be overly complicated
18 or complex. Indeed, I believe they should be
19 based on just four basic principles: 1)
20 approximate population equality among districts;
21 2) district continuity; 3) district compactness;
22 and 4) prohibition of division of counties,
23 cities and towns to a greater extent than is
24 necessary. If these four basic principles are
25 explicitly defined and made truly enforceable and

effective, the identity of the agency, which applies them, makes little difference.

1. The principle of district population equality has been effectively guaranteed by the federal constitution for almost a half-century. This is early nineteen sixties. State rules may tinker with the specific deviations allowed, but only within a very limited range.

Both contiguity and compactness are required under the present state constitutional procedures. Neither requirement, however, has been effectively enforced; both therefore require explicit definition and strengthening.

2. A contiguous district should be defined as a land area from any portion of which it is possible to go to any other portion by land without leaving the district. If, however, a district is composed of two or more land areas separated by water, such a district shall be deemed contiguous if a bridge, a tunnel or a regular ferry connection connects the portions. If no such connections are available, separated land portions shall be placed in the same district as the nearest land area.

3. Compactness is more difficult but not impossible to define. It is a quality which cannot be effectively defined with reference to a single district, but the degree of compactness in a state-wide redistricting plan, as a whole, can be gauged in comparison to other proffered plans, provided that all such plans adhere to all the other rules relating to population equality, contiguity and limited division of counties, cities and towns.

The basis for the comparison would be a total, cumulative length of all boundaries under the plan. The plan with a shorter total boundary length than any other plan would be adjudged compact, or a compact plan.

4. The fourth basic principle of fair districting, limited division of counties, cities and towns, can again be properly gauged only by comparison with competing plans. That plan with the fewest such divisions would be deemed the one in greatest conformity to the districting rules.

As you can probably see, my objective in advocating these four principles is to basically remove discretion from the process of drawing

1 districts and make it as close to being automatic
2 as possible.

3
4 The above principles would be applied in
5 a priority order in case of any conflict between
6 them. Population equality would be the primary
7 criterion, followed by contiguity, compactness
8 and limited division of jurisdictions.

9 Clear definition of these four
10 principles, followed by strict application would
11 not guarantee that everyone would be pleased with
12 every district. That should not be the goal of
13 fair districting, for such a goal is virtually
14 impossible to achieve under any arrangement.
15 What these rules do guarantee is that districts
16 will not be deliberately drawn either to enhance
17 or diminish the political prospects of any party,
18 ethnic group or individual candidates. They
19 would restore the centrality of voter-choice in
20 our legislative and congressional elections,
21 replacing the current system under which most
22 contests are, especially in this state, are in
23 effect, decided a decade in advance.

24 ASSEMBLYWOMAN DESTITO: Thank you Mr.
25 Wells. I guess you've discussed the provisions

1 by which and the priorities by which you would
2 establish redistricting, but you haven't talked
3 about an independent commission. Do you have any
4 - you know, you criticize the way in which it's
5 done currently, but what is your opinion on
6 creating an independent commission?
7

8 MR. WELLS: As I said in the
9 beginning, I'm not opposed to a commission.
10 There are some states where it has noticeably
11 improved the fairness of the process, but I think
12 it's a mistake to make this the central point in
13 redistricting reform because you can have a
14 commission, as the one I served on in New York
15 City, where the same battles that were fought in
16 the Legislature would simply be fought out in the
17 arena of the districting commission. It doesn't
18 solve the problem; it's a slight improvement.
19 That's the reason I didn't go into much detail.

20 ASSEMBLYWOMAN DESTITO: Do you mind
21 if we ask you questions about this? Okay.

22 The Voting Rights Act. We are precluded
23 in some ways by the Voting Rights Act and other
24 federal guidelines. You've heard us talk about
25 "Communities of Interest" and that sort of thing.

What's your opinion on that?

MR. WELLS: I think the Voting Rights Act principles embedded in that will solve themselves. I don't think they have to be written into the districting. Districting is a separate subject. I'm all for the reforms in the Voting Rights Act, although when I was on the commission in the early nineties a lot of our battles within the commission turned on a question of interpretation of the Voting Rights Act. Some people would interpret it in some ways, some in other ways.

As a matter of fact, one of the letters that I cherish as a result of my role in that commission, I was on one side of that battle and certain people were on the other side. Several years later I got a very nice letter from someone who was on the other side saying that he had studied the issue also and he wanted me to know that after having studied the issue now after several years, I was right and he was wrong.

Voting rights issues are addressed by the Voting Rights Act. Anyone who feels that anything in redistricting is contrary to the

Voting Rights Act is perfectly free to bring a suit under the Voting Rights Act. You don't have to give that person additional armament in districting. Districting should be a subject all by itself.

ASSEMBLYWOMAN DESTITO: Okay. Anyone else? Let me just say we've been joined by Assemblyman Mike Benjamin. Thank you Michael. Mr. Benedetto?

ASSEMBLYMAN BENEDETTO: Yes, thanks. Thanks so much Mr. Wells.

Basically what you're saying then, is its not the who, it's the how.

MR. WELLS: The how is much more important.

ASSEMBLYMAN BENEDETTO: Then what we should do is direct our focus on what the how should be and that should be the absolute here.

MR. WELLS: Yes.

ASSEMBLYWOMAN DESTITO: Mr. Gianaris:

ASSEMBLYMAN GIANARIS: I just have on quick question, kind of a follow-up to Mr. Benedetto.

Your testimony is that the how is more

1 important than the who and I know you didn't look
2 at the specific proposals, but both the one that
3 I introduced and the one from Assemblywoman Galef
4 deals with both, the how and the who.
5

6 MR. WELLS: I read yours.

7 ASSEMBLYMAN GIANARIS: I assume you
8 think that's a good way to approach it?

9 MR. WELLS: I'm not opposed to the
10 concept of a district commission. I think it can
11 be something of an improvement.

12 ASSEMBLYMAN GIANARIS: You think the
13 criteria is much more important. Thank you.

14 ASSEMBLYWOMAN GALEF: I have a
15 question on the issue of contiguous districts.
16 Are you aware that we have districts now that are
17 not connected in our state?

18 MR. WELLS: We have several districts
19 that are connected by water.

20 ASSEMBLYWOMAN GALEF: Without a
21 bridge and all that other

22 MR. WELLS: Yes, like the Varrenzano
23 Bridge. We also have districts up state where
24 there is a district that flanks one of the Finger
25 Lakes, I think its Lake Seneca. There's no

1 bridge connection there you have to swim across.
2
3 So, we do have several.

4 I'm reminded of a controversy we had when
5 I was on the districting commission here in New
6 York City drawing counsel districts. One of the
7 districts was drawn by the commission, and it was
8 along the Brooklyn shoreline. Another part of
9 the Brooklyn shoreline was attached to it and
10 only the beach connected them. When I got up to
11 attack that district I said, this district is
12 only compact at low tide.

13 We do have such districts in New York,
14 but I would hope that the way I've spelled out
15 the compactness rules would preclude any real
16 controversy. There are very few eventualities
17 where you have a piece of land that's not
18 connected in any way to the mainland or another
19 island. But what do you do in these scenarios?

20 ASSEMBLYMAN BENEDETTO: Thank you so
21 much for your testimony here. Our next witness
22 is Richard Emery from Emery, Celli, Brinckerhoff
23 & Abady.

24 MR. EMERY: Thank you very much for
25 the opportunity to come and express our views

1 today. I've submitted a fairly lengthy
2 testimony, which I, of course, will not read. It
3 would take much too long and I want to summarize
4 some of the thoughts in that testimony and give
5 you some ideas that a subcommittee of the New
6 York City Bar is now working on. I'm not here
7 representing that subcommittee because we have
8 not reached conclusions and its recommendations
9 have not been adopted yet by the whole committee,
10 the Election Law Committee of the Bar, let alone
11 the Bar itself.

12
13 I'm here as an individual who has been
14 involved in redistricting reform. In the last
15 cycle I was plaintiff's counsel in the Rodriguez
16 vs. Pataki case, which challenges the Senate
17 redistricting and I've been involved in One
18 Person, One Vote controversies and other
19 constitutional election controversies for most of
20 my legal career.

21 I'd like to address a couple of points
22 fundamentally. That is; what are the goals of
23 this redistricting reform. I take it, it's a
24 hard thing for legislators to do because if the
25 goals are well meaning public policy they involve

1 changing the safe district, changing the notion
2 of incumbency as the highest priority in
3 redistricting, that has traditionally I would
4 say, been the watchword for New York State
5 redistricting. If you're going to foster
6 competitive districts, and I agree with the
7 chairperson from Arizona that that should be one
8 of the highest criteria, rather than a lower
9 criteria in the area of goals for redistricting
10 reform, you come up right against political
11 interests of ensconced legislators. That's why I
12 applaud this committee for taking on this very,
13 very difficult task.

14
15 You have to deal with the lethargy of
16 incumbency. What you really have to do in New
17 York, and I think New York is a special case and
18 all of you know better than anyone else that New
19 York is a special case, is you have to deal with
20 what I call this unholy alliance that exists in
21 New York, of allowing the majority of the
22 Assembly itself and the majority of the Senate to
23 district itself, without any oversight of the
24 body. I believe that you should think about the
25 goals of this reform to be a lasting reform. We

1 don't want any transitory reform that comes out
2 of whatever reform this committee and this state
3 adopts.
4

5 Finally, I think the goal here is to have
6 voters choose their legislators in the classic
7 sense, rather than the other way around, having
8 legislator choose their voters.

9 The question then becomes what are the
10 means to these goals? The means to the goals
11 break down in two ways in some sense in the
12 proposals for reform. There is the non-partisan
13 method and there is the recognition that
14 redistricting will inevitably be partisan, and
15 how do you reach a non-partisan result within the
16 context of a partisan contest?

17 The generic bill tries for a non-
18 partisan, in a yeoman like way, for a non-
19 partisan approach, and I'll talk to that in a
20 moment. Assemblyperson Galef's approach, I
21 think, looks at much more of harnessing the
22 energy of a partisan process that ends up in a
23 non-partisan result. I, quite frankly, and I'm
24 in favor in principle of some tweaking of the
25 Galef approach. Our proposal will come out to be

1 probably a nine-member commission so that you can
2 have some ethnic diversity, as well as the best
3 advocates of the various appointing political
4 authorities, two by each leader, then, a chair
5 chosen by the eight that are appointed by the
6 leadership. But the key thing here, and this is
7 a tweak to the Galef proposal, is that the chair
8 must be in the majority of any proposal. In
9 other words, it will take a five to four vote,
10 with the chair in the majority, at a minimum, to
11 adopt any proposal.
12

13 That is the key thing to harnessing the
14 adversary political process to achieving a non-
15 partisan result. The reason being that you get
16 in the dynamic of a four four split party wise,
17 with a single chair that has to be a deciding
18 vote. You get a last best offer arbitration
19 process, which inevitably is the way that the
20 final plan will be chosen. That last best offer
21 will be in negotiation by each partisan side that
22 ultimately be chosen by, hopefully, the non-
23 partisan chair. That will be the end result.

24 I suggest to you that that process is the
25 most hopeful one for harnessing the partisan

1 process into a non-partisan result. I think you
2 get competitive districts that way, and you have
3 to achieve competitive districts.
4

5 Obviously, Mr. Wells point is a good one.

6 You have to ensconce the criteria. The criteria
7 here are critical, and what I would say to you is
8 that you need a constitutional amendment to do
9 all this. Again, I agree with the Galef approach
10 for that purpose. That is because the pressure
11 on the Legislature, at the time when incumbency
12 is truly threatened down to the wire, to change
13 the rules that it has created for its own
14 commission, would be too great to preserve that
15 commission. Of course, if a constitutional
16 amendment does not exist, the Legislature will be
17 able to amend its own enactment, its own
18 commission process at any time. Ultimately we
19 will be able to denude the whole non-partisan
20 process, eviscerate it at the last moment to
21 achieve its political goals. Therefore, a
22 constitutional amendment, in my view, is critical
23 to this entire process.

24 Let me just say that the New York culture
25 requires also that we guarantee an open process

1 and a timely process in this constitutional
2 amendment, and that we eliminate the old
3 antiquated language of the constitutional as it
4 currently exists. As you probably know, the
5 current constitution doesn't even remotely
6 resemble the current redistricting process, yet
7 it has a lot of influence on the court cases that
8 have essentially created the current process.
9

10 Again, you also must have language in the
11 amendment in my view, that protects Voting Rights
12 Act interest, protects the interests of racial
13 minorities in the process.

14 Subsidiary to all these concerns, I would
15 say, you have to make up a priority of the
16 issues, of course, population equality at the
17 top, localities, compactness, voter continuity.
18 Voter continuity between censuses, between
19 redistricting is important. Incumbency and of
20 course counting prisoners and where they reside
21 in my view is a very important priority.

22 Now, let me just say, I know how tight
23 you are with so many witnesses there are here,
24 let me just make a couple of short comments about
25 each of the bills that are prominently before

1 this committee and before the Legislature, and
2 before the public in the process that we are now
3 undergoing prior to the two thousand and ten
4 census.
5

6 Let me address the Gianaris bill first, bec
7 ause I think there are several very important
8 deficiencies, and while I applaud Assemblyman
9 Gianaris for a yeoman's effort at trying to adopt
10 neutral principles and create a non-partisan
11 political process, I think that as a practical
12 matter, the Gianaris bill, regrettably, doesn't
13 work, while there are many good things in it and
14 many good things that ultimately ought to be
15 adopted in the constitutional amendment. The
16 reason I say that is because, first of all, it
17 must be a constitutional amendment for the
18 reasons I said, that the Legislature will be
19 compelled to abandon it in the breach, and I
20 worry about that.

21 Second of all, if you look at Section
22 Six, line thirty on page six of the bill, the
23 third round in the Gianaris bill allows for the
24 Legislature to engage in any amendment. That is
25 qualified by Section two, but it allows for any

1 amendment in the third round. Given that
2 language, the same system that exists today will
3 occur in the third round of the redistricting
4 process.
5

6 In other words, the unholy alliance will
7 creep its way back in. The real plans will come
8 out of the drawer on the third round, and we will
9 be back in the same situation we are in now, the
10 way I read the bill. I would hope that other
11 people could read the bill differently, but the
12 way I read the bill there is no escape from the
13 fact that ultimately, under the Gianaris bill,
14 the Legislature has the final say in any plan.
15 My reality checks on how New York operates is
16 that its clear that that's where the game will be
17 played. In fact, it will end up being a less
18 open process than the current process, which
19 involves Lat four and the whole process of having
20 hearings around the state, because everyone will
21 keep their secret plan in their pocket until the
22 third round, and then it will come out and the
23 deal will be made between the houses, and there
24 won't be any way to avoid the ultimate political
25 expediency that we now suffer from.

1 The other factor is that in the Gianaris
2 bill the Court of Appeals plays what I see to be
3 an unconstitutional role. I don't think the
4 Court of Appeals can adopt any final plan,
5 because that would be legislating and the
6 Constitution of the State of New York requires
7 the Legislature to pass all laws. In order for
8 the Court of Appeals to adopt a redistricting
9 plan, and including the districting plans, in
10 order for the Court of Appeals to adopt a
11 redistricting plan you have to have a
12 constitutional amendment to allow that to occur.

13 So, we have a problem here referring the
14 Court of Appeals for final legal authority on
15 something that is not litigation. It's also a
16 seeming violation of separation of powers when
17 you're going to have litigation probably that
18 would reach the Court of Appeals. I agree with
19 the idea that the Court of Appeals should have
20 initial, original review of the plan, but it
21 should be in context with the litigation over the
22 plan. It should not be as part of the
23 legislation that incorporates the Court of
24 Appeals to become actually the Legislature in
25

adopting the plan, which is unconstitutional.

I think that there are questions with the constitutionality in the Gianaris plan of reducing the deviations to two percent. I agree with the goal of two percent. I think the goal of two percent is an admirable one, but I think given the way the constitution reads in maintaining priorities of localities in the redistricting process juxtaposed with the way that the Federal Constitution has been interpreted to allow ten percent. There is an argument that the two percent rule as a legislative enactment is not constitutional. I think if you put it in the State Constitution, two percent would be fine.

Finally, I just think that the non-partisan approach, while laudable, just doesn't work. The selection by the Nominating Committee, and then the selection from the Nominating Committee of the commission I think ultimately, as we know about New York, is going to be political. If we try to do it in a nonpolitical way, we're just going to open ourselves to accusations of naiveté. I think the key here is

1 to do what I see the Galef proposal doing, and
2 that is harnessing opposing political factions to
3 reach a non-partisan result.
4

5 Now, let me just say one quick word about
6 the Galef approach, because I think its basically
7 the right approach, certainly by having a
8 constitutional amendment and certainly by
9 challenging partisan energies to reach the non-
10 partisan result. I think that you shouldn't
11 necessarily restrict the qualifications of the
12 people on the commission. I think they should be
13 blatantly political. I think they should be
14 whomever the leaders want to appoint as their
15 best advocate to be on that commission. I think
16 the major failure in the Galef amendment is that
17 the Chair is not required to vote with the
18 majority. We will not get this last best
19 arbitration process going unless the Chair is the
20 final arbiter of the plan.

21 Finally, as a technical matter, the Galef
22 amendment does not clean up the old antiquated
23 language and it needs more guarantees of openness
24 and quick process. It too should lower the
25 deviation to two percent.

1 Let me say in conclusion, the sub-
2 committee that we're working on is actually
3 drafting, as we speak, a Constitutional Amendment
4 that, I think, would build upon the Galef
5 amendment, and try and achieve some of the goals
6 that I've been trying to describe to you. We
7 will have that language and I hope the committee
8 will pass on it, so that we can get you that
9 material with support before December or so.
10 Certainly we're going to work on it through
11 November. Maybe by the end of November, early
12 December we will be getting to you what we
13 believe is the important way, the best way of
14 achieving this reform.

15 Again, I thank you very much for this
16 opportunity to address you and we'll be happy to
17 answer any questions.

18 ASSEMBLYWOMAN DESTITO: Thank you.
19 I'm sure we'll have questions. We will have
20 other hearings. This is not the last hearing on
21 this issue, so it doesn't preclude you from
22 coming back with your proposal. I just want to
23 let you know that.

24 MR. EMERY: Thank you and we will
25

1 certainly be in contact with you in trying to get
2 you our materials.
3

4 ASSEMBLYWOMAN GALEF: Unfortunately,
5 I'm going to have to leave at this very critical
6 time. I will read everything you said about our
7 bills and look forward to finding out what the
8 Bar Association will come forward with.

9 MR. EMERY: You should feel free to
10 call me or try and draw on our experiences.
11 We've been through a lot of this and would hope
12 to be available to work on this together.

13 ASSEMBLYWOMAN DESTITO: Mr. Gianaris.

14 ASSEMBLYMAN GIANARIS: Thank you Mr.
15 Emery I just have a quick question for you,
16 because I fundamentally agree with your point
17 that its preferable to have whatever changes in
18 the Constitution because of the difficulty of
19 moving away from and establishing the importance
20 of the principles.

21 My question to you is, have you given any
22 consideration to the practical difficulty of
23 enacting a constitutional amendment, which, if my
24 math is correct, can't even possible come up for
25 a vote until two thousand and nine, which is

1 right up against when the work would have to
2 begin. I guess that all boils down to the
3 question, if the choice was nothing because a
4 constitution amendment was too difficult to
5 achieve, would you rather have a legislative
6 approach or nothing at all?
7

8 MR. EMERY: I would much rather have
9 a legislative approach than nothing at all, and I
10 commend you for that reality check. You're
11 right; a constitutional amendment would be
12 extremely difficult to pass. My hope is that,
13 assuming Elliott Spitzer is elected; he's
14 committed himself to a process, which is going to
15 improve redistricting. Hopefully, reform it in
16 the long term. That constitutional amendment can
17 be drafted can be pushed through hopefully, at
18 least initially right away in the sweetheart
19 period. We'll see what happens the second time
20 around through the legislative process.

21 You're right. Politically it's a heavy
22 lift. What I would commend to you in any event,
23 is fix the language in Section Six, because as
24 long as that's there I'm afraid that when fully
25 fleshed out the Gianaris bill will be looked at

1 as a bait and switch, and I know you didn't
2 intend it to be that way. The Gianaris bill has
3 a lot of wonderful ideas and I would hate to lose
4 those ideas in the cynicism that will result from
5 the Section Six deficiency, as I see it.

6
7 So, yes, I would much rather have the
8 Gianaris bill, as amended, that nothing, but the
9 best thing of course, and I think that you agree
10 with me, is that there will be an amendment to
11 the Constitution.

12 ASSEMBLYMAN GIANARIS: I would be
13 happy to work with you on some of these concerns
14 you have, but I would also suggest to the Bar, to
15 the Association, that what Sandy and I have been
16 doing is working together, in tandem, supporting
17 each others' efforts, so there's no reason why we
18 can't go in both directions at the same time if
19 one becomes too difficult to achieve. Therefore,
20 I'll just put that in your mind as you meet
21 tonight with the committee.

22 One other point I want to make is your
23 concern about the Legislature having the final
24 say in the third round is legitimate, but one
25 thing also to keep in mind is that the criteria

1 written into the bill are intended to remain in
2 effect, so even if the Legislature ends up
3 drawing its own plan after the third round, it
4 still must meet the detailed extensive criteria
5 that are listed.
6

7 MR. EMERY: That's very good, but
8 what that will do is lead to the litigation that
9 is a mess and we should simplify at a minimum and
10 avoid at a maximum.

11 I think that the criteria are extremely -
12 its very important that we have criteria and
13 legally enforceable criteria, but as I can tell
14 you from litigating Rodriguez vs. Pataki three
15 years ago, the criteria was there too and, in
16 theory, enforceable, but the federal courts give
17 a lot of leeway to the states and especially the
18 Legislature when it does what it does. Able
19 counsel for defending a plan can be very
20 successful, even in the face of pretty convincing
21 proof that the criteria have not been followed.

22 So, I'd like to try to get a plan that's
23 excellent in the first place, and not have to
24 litigate it, or litigate only the edges of the
25 plan rather than the core of the plan. I

1 wouldn't rely too much on the fact that the
2 Legislature's going to have to follow the
3 criteria. Once the Legislature gets a hold of
4 it, it will be a fundamentally political process,
5 and incumbency will predominate all other values.
6 That's just life in New York.

7
8 ASSEMBLYWOMAN DESTITO: Mr.
9 Benedetto.

10 ASSEMBLYMAN BENEDETTO: Thank you Mr.
11 Emery. Did I hear you correctly that in one of
12 the criteria that you would apply would be
13 incumbency?

14 MR. EMERY: I think incumbency is, in
15 fact, a low level criteria. Way below
16 competitiveness, way below keeping localities in
17 tact, obviously below equal population and racial
18 and ethnic preservation of representation and
19 opportunity to elect candidates of choice.

20 I don't think incumbency in the following
21 sense, that districts should have as much
22 continuity as possible from one election to
23 another. As I said, it should not be candidates
24 choosing their voters. It should be voters
25 choosing their candidates. An effective

1 incumbent, an incumbent that voters want to
2 choose and that voters have been represented by
3 in the past, is of value.
4

5 There is no question that people - see I
6 happen to be against term limits. I think term
7 limits are wrong because people ought to be able
8 to vote for anybody they believe is qualified for
9 office, including somebody who has served two
10 terms. Incumbency has a value when it's been
11 effective, but it doesn't have a value when it
12 supervenes competitiveness. What I'm talking
13 about is continuity between old districts and new
14 districts. That's a value and that's essentially
15 is incumbent in the term incumbency.

16 ASSEMBLYMAN BENEDETTO: Explain the
17 difference between what you seem to favor in some
18 sort of judicial review of the lines once they've
19 been drawn, and that which was proposed in Mr.
20 Gianaris' bill, which you seem to be against.

21 MR. EMERY: The separation of powers
22 problem in so many words. As I understand the
23 Gianaris bill, and that is, when there is a
24 deadlock the Court of Appeals actually gets the
25 plan and has to choose from among the plans that

1 have already existed, they can't even change the
2 plan, they have to choose from among the plans
3 that have been proposed and adopt it themselves.

4 I think that's unconstitutional because the
5 Court of Appeals is, in fact, acting as the
6 Legislature. With out an amendment to the
7 Constitution saying that the Court of Appeals can
8 act as the Legislature, we now have the situation
9 where the Legislature is the only body in New
10 York State that can adopt laws, and of course
11 redistricting is a law. So I think that is a
12 problem.
13

14 I think the problem is more fundamental
15 than that. It's a fundamental separation of
16 powers problem. The Court of appeals should not
17 be in the position of being forced to adopt one
18 of the proposed plans. It should be in the
19 classic litagative position of being able to have
20 advocates before it arguing about which plans are
21 appropriate, which criteria are appropriate and
22 which are required by the Voting Rights Act, and
23 what equal population means in the context of the
24 specific plan, and then it should appoint a
25 master and the master should report and then

1 there should be arguments and litigation about it
2 and then it should decide. That's what it will
3 have to do anyway even under the Gianaris plan.
4 So, it would get the process twice, ruling on its
5 own act. That makes no sense to me and I think
6 it has fundamental flaws in our process.

8 ASSEMBLYMAN BENEDETTO: Lastly,
9 underneath what you're proposing, your ideas
10 about the chairperson of the committee, an
11 extremely powerful chairperson, aren't you afraid
12 of something like that?

13 MR. EMERY: No I'm not because the
14 reality is that let's say there were eight
15 members that were separated by party in that
16 process that were selected, I don't think anybody
17 that those eight members, who are essentially
18 controlled by the leadership of the houses, will
19 choose that isn't esteemed and respected and
20 able. It's very hard to imagine that the four
21 leaders of the two houses of our Legislature are
22 going to be able to agree on somebody who isn't
23 truly non-partisan in the ultimate sense, and
24 that's what I count on, somebody to be like an
25 arbitrator in the process of plans being offered

1 which are more and more acceptable in a neutral
2 sense, given all the values that we have
3 prescribed in the constitutional amendment.
4

5 ASSEMBLYMAN BENEDETTO: Thank you
6 very much.

7 ASSEMBLYWOMAN DESTITO: Mr. Benjamin.

8 ASSEMBLYMAN BENJAMIN: I want to thank
9 you for having us here and I have a couple of
10 questions for Mr. Emery.

11 Mr. Benedetto has had two of my four
12 questions answered.

13 When it comes to competitiveness how do
14 you define it? Is it intraparty competitiveness
15 or is it multiparty competitiveness?

16 MR. EMERY: Well, obviously it has to
17 be multiparty competitiveness. I don't know how
18 you redistrict for intraparty competitiveness. I
19 don't know how you have primaries that are
20 competitive, except in the sense that if you've
21 created a competitive environment through the
22 redistricting plan by having multiparty
23 competitiveness, I suggest to you that a natural
24 result of that will be a sense that incumbency is
25 not sacrosanct, and that intraparty

competitiveness will flow from that.

ASSEMBLYMAN BENJAMIN: You answered that New York City is a bit of a - well, my county, Bronx County, be as competitive, but in parts of the City, parts of the Bronx, you can't find a republican for a competitive general election, you can in other parts of the state.

My concern is how do you define competitiveness?

MR. EMERY: I think it is difficult to have all competitive districts, especially, for instance, in the City. You could do it, but it would be an absurd plan, it would look like a point with triangles going out from the state. That's the only way you could truly have competitive districts, and it would be a ridiculous look.

ASSEMBLYMAN BENJAMIN: My real thought is actually it would have to be two parties; multiparties should be doing themselves, working families, republicans, democrats. We should be looking at greater competitiveness so voters could choose which candidates they want to vote for, and it shouldn't be something that's

1 legislated in the definition or creation of
2 political boundaries.

3
4 MR. EMERY: You may be right, but I'm
5 afraid it doesn't work. I just think the reality
6 is that the boundaries, the redistricting process
7 can eliminate competitiveness and then all the
8 parties lose spirit, they lose their edge, they
9 lose the excitement about the election, they lose
10 the ability to think they could win when the
11 redistricting process isn't fair and open and
12 doesn't make competitiveness a value.

13 So, I worry about the cynicism that flows
14 from a redistricting process that ends up being
15 preordained in its result.

16 ASSEMBLYMAN BENJAMIN: I agree with
17 the Court of Appeals that they should not be part
18 of the approval process. I think that's the
19 proper and fair way to handle things.

20 Prior to coming to the State Assembly, I
21 was Deputy Chief Clerk Bronx Board of Elections.

22 In two thousand and two we had the task of
23 trying to design the election districts for the
24 assemblies that were created by the Legislature.

25 We had a number of anomalies because of the way

1 the Senate districts were cut, and the way in
2 which the commercial districts were cut. We wind
3 up with election districts where we have one
4 voter, and that's troubling. You wind up having
5 an election district that had no voters, it's
6 only a crosswalk, and that's absurd.

7
8 If you look, I think you're absolutely
9 right that the Senate and the Assembly should
10 work together on all three, Congressional, State
11 Senate and the Assembly districts together. I'm
12 not sure whether or not the thought about putting
13 some of this within the same county how that
14 would work. Let's say within the same Senate
15 district.

16 MR. EMERY: Nesting, we call it
17 nesting. That is one of the things that could be
18 put in the constitutional amendment or in the
19 legislation, that there could be three Assembly
20 districts within every state Senate district. If
21 that were the case, you would automatically
22 eliminate the unholy alliance, because both
23 houses, well, at least the Assembly, would have
24 an extremely great interest in the senatorial
25 redistricting. It's an interesting idea. It's

1 one that I think should be studied. Quite
2 frankly, I don't have an opinion one way or the
3 other yet. I think its one of the things our
4 subcommittee is looking at as a way of creating a
5 rule that would effectively eliminate the unholy
6 alliance, as I call it.

8 ASSEMBLYMAN BENJAMIN: What are the
9 concerns about how the Board of Elections will
10 create the election districts to make everything
11 work together and work in a fashion that serves
12 the voters when they go to vote on Election Day?

13 MR. EMERY: Those are bigger problems
14 I think. The election district issues are
15 administration issues, and, regrettably, our
16 State Board of Elections, and each of our Board
17 of Elections, are divided by party and they are
18 paralyzed by that process.

19 ASSEMBLYMAN BENJAMIN: Right, but
20 once the lines are in its basically a non-
21 partisan process of creating election districts,
22 and given the rules each of the county boards
23 have when it comes to the number of voters they
24 have to put in each ED in order to set out the
25 voting machines, it's a real long process, which

1 takes me to your other point.

2
3 When it comes to the scheduling of
4 redistricting, and preparing for the time for
5 litigation and other things that occur during the
6 process. Given the fact that the tenth is in
7 twenty ten, probably April fifteenth or so,
8 around that time, then the early results come out
9 December or January. Then let's say the process
10 for determining the districts, congressional,
11 assembly, senate, how long should that take, and
12 then when should the vote be taken? When do you
13 have a plan come out and then when do you have it
14 adopted, and then do you give yourself a year,
15 let's say, for doing part of twenty twelve in
16 preparation for the election and for the Boards
17 of Elections to draw the maps and get everything
18 in place. You're looking at a very tight
19 schedule.

20 MR. EMERY: You are absolutely right
21 and we've suffered from this in the two thousand
22 cycle. It was terribly tight and the reality is
23 that November of two thousand and two, actually
24 the primaries of two thousand and two, is the
25 absolute drop-dead deadline. You need

1 petitioning periods, you need all the preparation
2 process.

3
4 We will try to address that in the
5 amendment. I think that should be part of the
6 amendment, part of the reform. The open and
7 scheduled process at each decennial redistrict.

8 ASSEMBLYMAN BENJAMIN: You should
9 also put demonstrative process for the local
10 Board of Elections to get their job done.

11 MR. EMERY: That's what's really
12 going to serve the voters. Let me think about
13 that with the group.

14 ASSEMBLYMAN BENJAMIN: Lastly,
15 protection of minority voting rights, very dear
16 to me.

17 When we look at the three counties in the
18 City that are voting rights counties, we have
19 preclearance, Bronx, Kings and Manhattan.
20 Congressional districts that cross county lines
21 and go into non-preclearance districts, like
22 Staten Island or, or in the Bronx you have a
23 Bronx, Westchester, Rockland County district, how
24 does the law work? I was one of the litigants
25 when we filed against the Seventeenth

1 Congressional District, which went from the
2 Bronx, to Westchester and then it went to
3 Rockland County, and none of the minorities, I
4 believe in Westchester and Rockland County have
5 much in common with the folks in the Bronx. What
6 should have been, technically it's a majority,
7 minority district, but it cannot elect a minority
8 person to that congressional seat. How do we
9 then make the Voting Rights Act work?
10

11 MR. EMERY: Let me try to answer that
12 quickly because I know there's a big long line
13 out there and you're short on time.

14 My understanding for Section Five
15 purposes, retrogression, is that those districts
16 are part of the retrogression analysis when they
17 are split between counties that are part of
18 Section Five. I may be wrong about that, but I
19 think they are. For Section Two purposes, that
20 is, the opportunity of minority groups to elect
21 candidates of choice, the analysis holds no
22 matter where you are. So that analysis has to be
23 taken into account in the whole redistricting
24 process and, of course, will be inevitably the
25 subject of litigation and the complicated, very

1 exciting, very interesting complicated analysis
2 of who votes where, why and when in the ethnic
3 communities. We've looked at this very
4 carefully, done all the statistical work for
5 months and months and months, and analyzed where
6 candidates of choice could be chosen. We were
7 defeated where we believed we should have
8 succeeded.

9
10 These are very thorny issues, but you
11 can't say much more in a redistricting reform
12 then, that the Voting Rights Act criteria won't
13 be respected and predominate.

14 ASSEMBLYWOMAN DESTITO: Mr. Gianaris
15 please.

16 ASSEMBLYMAN GIANARIS: I just have
17 one follow-up question Mr. Emery.

18 It's related to the separation of powers
19 issue because as I was sitting here I was
20 thinking back, and I don't have the specific
21 example in mind, but it seems to me in the past
22 there were times when the courts actually did, or
23 threatened to draw lines when the Legislature
24 didn't do that.

25 MR. EMERY: Absolutely.

ASSEMBLYMAN GIANARIS: Doesn't that present the same set of problems?

MR. EMERY: No. That's impasse litigation and that's not litigation where the courts threatened it, its where parties start a law suit, under either the Voting Rights Act - once you have an impasse and you have a one person, one vote violation because the old lines are still in effect and the new lines have to come into effect and then there are no new lines.

There are limits by which you can go too long and you have what is called impasse. Then a party, we did this, starts a litigation on impasse and the courts, either state or federal courts then are in the position of saying, Legislature draw the lines by such and such a date or I will have to appoint a special master and a special master will draw the lines.

There are very different criteria for courts drawing lines than legislatures drawing lines. They have to be very close to equal population. They virtually eliminate all political considerations. They have to take Voting Rights Act issues into account

1 predominantly. That is the worst-case scenario
2 always, when the courts are given the job of
3 drawing the lines.
4

5 ASSEMBLYMAN GIANARIS: Would it
6 address the constitutional problems that you see
7 if some variation of that were put into effect
8 instead, where if the Legislature were unable to
9 come to a plan in time, it would end up in the
10 courts.

11 MR. EMERY: My suggestion is that the
12 Court of Appeals have original jurisdiction over
13 any case that comes out of an impasse, so that
14 you don't have to go up through the trial courts.
15

16 As the Arizona chairman said, he wasted
17 six million dollars on litigation up through the
18 trial courts. I think the Court of Appeals ought
19 to have original jurisdiction, and that would be
20 something that I believe, I don't want to speak
21 too soon, I believe our proposed constitution
22 amendment will address.

23 ASSEMBLYMAN GIANARIS: I think that
24 was the intent of the language that you
25 initiated.

ASSEMBLYWOMAN DESTITO: Thank you Mr. Emery. Thank you very much. Mr. David Pollock, Associate Executive Director of the Jewish Community Relations Council.

MR. POLLOCK: Good afternoon. I'm here today mostly to listen and to learn. I thank all of you for your interest in this matter, your insightful questions and the obvious intelligence that you're devoting to this subject.

I just want to make a couple of very quick points and I'll let the other speakers move on.

Number one, this is my - I've gone through three redistrictings already in my professional capacity, and I've also seen both the legislative process and, here in New York City we do have an independent Districting Commission. Both our processes work. Both processes are handicapped in various ways and I don't think that there's a magic bullet. We don't have any formal position as of yet, and we are going to continue this process with you.

In terms of an observation, I think that

1 Assemblyman Gianaris is right. The special
2 masters, essentially the check and balance over
3 the Legislature, the ability for groups like
4 those represented by Mr. Emery to come in to the
5 Legislature and force them to come up with a
6 plan, essentially broke the logjam.

7
8 I'll get back to the logjam in a second,
9 but another issue that I wanted to point out, and
10 something that's very important, it was an issue
11 that Assemblyman Espaillat kept bringing up,
12 community of interest. The Voting Rights Act is
13 an incredible example of community of interest.
14 The example that I remember is the old - in
15 nineteen ninety was the Eleventh Congressional
16 District and now it's the Twelfth, which is known
17 as the Reinecke District. Now its created, it's
18 violated three counties, crossed rivers and the
19 diversity in terms of housing and ancestry was
20 great, but it was an incredibly important issue
21 to bring that district together, which became
22 known across the country as the Bullwinkle
23 District. It was very important to bring those
24 people together so that a community district
25 could be empowered. That's something that we

1 can't forget.

2
3 There are other "Communities of Interest"
4 and I think we have to continue to bring
5 "Communities of Interest" to the table and give
6 them some clout. That clout obviously is
7 secondary to the Voting Rights Act, but that
8 clout has to come to the table, and it might even
9 be more important than rivers or county lines.
10 It's something that should be considered.

11 Finally, in terms of the issue of the
12 special master, the special master broke the
13 logjam in a very important district. That held
14 up redistricting in both the nineteen ninety and
15 two thousand and two. The question was, which
16 region, which therefore implied which party,
17 would lose the congressional seats. That was the
18 discussion that the leaders couldn't get down to,
19 couldn't settle. I urge the Task Force and the
20 Commission to bring to the table the issue of
21 census enumeration. It sounds like a very
22 bizarre issue, but in census two thousand if
23 forty-seven thousand, two hundred and forty-nine
24 more residents were found in New York State, we
25 would have only lost one seat rather than two.

1 New York City has a wonderful, wonderful
2 program and some of you may have noticed that the
3 Census Bureau just agreed with the challenge that
4 New York City brought, and increased New York
5 City's population by seventy thousand, six
6 hundred. The first estimate was that's worth
7 twenty-nine million dollars to New York City.
8 Well, what's a congressional seat worth and what
9 can the Legislature do to get some of the areas
10 outside of New York City to do the same sort of
11 due diligence, and do the work, because its not
12 easy, to find these people so that we might only
13 lose one seat rather than two.

14 Thank you very much.

15 ASSEMBLYWOMAN DESTITO: Thank you. I
16 just have one question. How should we learn
17 about community needs in definition? Is it
18 through public hearings? As stated earlier,
19 Sandra Day O'Connor coined the term, but never
20 defined it. Can you give us your thoughts on
21 that? I know the Jewish community is probably
22 your interest, but how would you want us to
23 define it?

24 MR. POLLOCK: I think there's a
25

1 mixture here. Obviously, we need hearings, we
2 need public input, but we also have data. The
3 date, for example, I've just been looking at New
4 York City numbers. In nineteen ninety, fifty
5 percent of New York City's Hispanics were Puerto
6 Rican. They're down to thirty-four percent and
7 the number of Dominicans is coming close to the
8 number of Puerto Ricans. Are they all community
9 of interest? I don't know that, but I have data
10 to back that up. I can look at where the data
11 lie and I can then talk to these communities and
12 invite testimony to have the communities define
13 their "Communities of Interest".

14
15 Let's be very honest. There will be
16 different people who come up with different
17 definitions. That would be for the Legislature
18 or for the commission, or whatever body has to
19 make the decisions, to bring all of these
20 disparate facts and opinions together, and come
21 up with a decision.

22 ASSEMBLYWOMAN DESTITO: Mr.
23 Espaillat.

24 ASSEMBLYMAN ESPAILLAT: Do you have
25 any recommendations? You mentioned census

1 enumeration, and I agree with you. As we move
2 forward and these decisions are being made now
3 before the census actually come out, and we have
4 addressed certain issues that we feel were
5 negatively impacted on our count. Do you have
6 any recommendations to the Census Bureau, from
7 us, from the community; as to how better we could
8 enumerate and count our folks?
9

10 MR. POLLOCK: Let me just say that
11 the New York City - the population division of
12 New York City - Department of City Planning has
13 written a book on this. There is something that
14 scholars talk about as the Salvo Effect. Joe
15 Salvo is the director of that division, and what
16 they do is they make sure that the census keeps
17 up with every home being built. They also
18 understand that in your district there are often
19 three or four people per apartment and there's a
20 back door that no one knows about and the census
21 bureau doesn't go out and find it.

22 People have to do the work, and if the
23 Census Bureau will not do the work because its
24 not in their interest, then one thing we're
25 calling on the Legislature to do is to try to

empower the various counties around the state to do similar work, and to know that we're all in this boat together.

ASSEMBLYWOMAN DESTITO: Thank you Mr. Pollock. Next witness is Jenigh Garrett, Assistant Counsel, NAACP Legal Defense and Educational Fund.

Good afternoon. Thank you for being here.

MS. GARRETT: Thank you. I'm Jenigh Garrett, Assistant Counsel at the NAACP Legal Defense and Educational Fund, and it is a pleasure to deliver testimony today regarding the legislative proposal to delegate the drawing of electoral district lines to a new body described as an Independent Redistricting Commission.

Today I will address my remarks to the ways in which the legal requirements of the Voting Rights Act as amended, bear on the IRC proposal directly and indirectly. More specifically, my testimony today will address three points.

First, I will address the legal considerations inherent in adopting an IRC as a method to reform the redistricting process in New

1 York. Next, I will address some of the practical
2 considerations associated with the evaluation of
3 IRC as a method to reform the redistricting
4 process, and finally, my testimony will address
5 process considerations that are presented by the
6 possible implementation of an IRC in New York.
7

8 First, the process of gerrymandering
9 districts is firmly entrenched in U.S. political
10 history. The one person, one vote requirement of
11 the Constitution is the first restraint imposed
12 on the gerrymandering process by federal law.
13 Under this requirement legislators must draw
14 districts that encompass equal or nearly very
15 equal numbers of voters. However, this
16 requirement did not protect racial and language
17 minorities from gerrymandering. That
18 intentionally, or later unintentionally, packed
19 or cracked cohesive minority communities and
20 limited their chances of their voters to achieve
21 political success at the polls.

22 The Voting Rights Act, in Section Five in
23 particular, is a critical legal remedy that was
24 enacted to, and did curtail discriminatory
25 practices employed against minority communities

1 including those in New York State. The VRA
2 protection for New York minority voters are an
3 inextricable part of the redistricting process
4 and are second in importance only to the legal
5 requirement of one person, one vote under the
6 United States Constitution.
7

8 In addition, the collective teaching of
9 two recent Supreme Court decisions, *Larios v. Cox*
10 and *LULAC v. Perry*, is that partisan interests do
11 not insulate or justify otherwise
12 unconstitutional or discriminatory redistricting
13 plans; when political gerrymandering interferes
14 with meeting one person, one vote requirements or
15 statutory protections for the ability of a
16 minority group to elect a candidate of choice,
17 they must give way.

18 Persistent racially polarized voting
19 patterns often mean that as a practical matter,
20 the racial composition of a district determines
21 whether any minority preferred candidate is
22 electable. Too often, many have conflated the
23 concept of a coalition district with "influence
24 districts" in the process.

25 The Supreme Court addressed an influence

1 district could be substituted for an opportunity-
2 to-elect district, otherwise required by Section
3 Five of the VRA, in Georgia v. Ashcroft. The
4 courts suggested that it could, depending on
5 other factors, however, on July twentieth, two
6 thousand and six, the United States Congress
7 legislatively overruled Georgia v. Ashcroft and
8 reaffirmed the long standing principle that
9 existing minority opportunity-to-elect districts
10 cannot be traded off for influence districts
11 consistent with Section Five.
12

13 It is against this backdrop that we must
14 review the proposal to implement an independent
15 redistricting commission in New York.

16 I would now like to address the practical
17 application of establishing the criteria and how
18 it works with the Voting Rights Act.

19 The requirements of the Constitution and
20 the Voting Rights Act must be satisfied first in
21 the redistricting process, and are therefore,
22 more than mere terms meriting a place against
23 competing criteria during the redistricting
24 process. They are best achieved when expressly
25 articulated as controlling. Redistricting

1 experiences in California and Arizona, both
2 Section Five cover jurisdictions; exemplify the
3 importance of the explicit articulation of the
4 requirements of the Constitution and the VRA.
5 Although California does not have an independent
6 redistricting commission, both California and
7 Arizona consider mandatory redistricting
8 criteria.
9

10 In Arizona, the redistricting criteria is
11 considered by the Independent Redistricting
12 Commission. In California, if the legislature is
13 unable to adopt a redistricting plan on a timely
14 basis, California law provides for the Judicial
15 Branch to fashion a reapportionment plan. In
16 this process, what has come to be known, as the
17 Reinecke Criteria must be followed. Thus, like
18 the Arizona redistricting commission, the
19 appointed Special Masters must apply criteria
20 mandated by the U.S. Constitution, the Voting
21 Rights Act, the State Constitution, and the
22 additional Reinecke Criteria during the
23 redistricting process.

24 However, the similarities end there. In
25 fact, despite the unequivocal mandate in

1 Arizona's constitution, that the independent
2 commission, which did not have any Latino
3 representation, comply with the Voting Rights
4 Act, Arizona submitted a two thousand and one
5 statewide legislative plan that contained five
6 districts that the Department of Justice did not
7 preclear, because the plan had a retrogressive
8 effect on minority voters by reducing their
9 opportunity to elect a candidate of choice in
10 Arizona and fail to comply with the requirements
11 of Section Five of the Voting Rights Act. Thus
12 five districts, drafted by the independent
13 commission, reduced the opportunity of minority
14 voters to elect a candidate of choice in Arizona
15 statewide plan.
16

17 In contrast to the Arizona redistricting
18 process, the three Special Masters in California,
19 when applying the criteria, paid close attention
20 to the provisions of the Voting Rights Act and
21 endeavored to draw boundaries that would
22 withstand Section Two challenges under any
23 foreseeable combination of factual circumstances
24 and legal rulings. The distinction between the
25 approaches in Arizona and California is that the

1 Special Masters who drafted the California
2 apportionment plan thought to balance many
3 redistricting principles, including the supra
4 meeting requirements of the federal Constitution
5 and Voting Rights Act, while adhering to the
6 Reinecke Redistricting Criteria, and did not find
7 compliance with the VRA incompatible with
8 traditional redistricting principles, or the
9 Reinecke Criteria, because compliance with the
10 VRA was mandatory and reinforced the Act's
11 guarantee to minority groups to have an equal
12 opportunity to participate in the political
13 process.
14

15 The conflicting outcomes in Arizona and
16 California teach that ambiguous or sweeping
17 language that mandates compliance with the Voting
18 Rights Act, but also establishes criteria of
19 apparent, equal weight that directly conflict, or
20 cause direct tension with the Voting Rights Act
21 is inadequate. It must be clear to the
22 individuals undertaking the redistricting process
23 that compliance with the VRA and the Constitution
24 is not discretionary, but mandatory. In fact,
25 statutory or constitutional language that fails

1 to adequately the specific steps required to
2 comply with the Voting Rights Act does little to
3 reform the redistricting process, and may,
4 unfortunately, create new opportunities to cloak
5 discrimination.
6

7 As evidenced by Arizona, an absolute
8 directive to comply with the VRA can be
9 insufficient, if the criteria do not convey a
10 sense of how to comply with the VRA while
11 balancing the other redistricting criteria.

12 Next, I'd like to talk about the practical
13 ability to separate politics from a political
14 process.

15 Many supporters of IRC's assert that the
16 creation of a commission will remove or
17 substantially curtail partisan interest in the
18 redistricting process, and dramatically enhance
19 competitiveness. In support of this contention,
20 some proponents point to Iowa as the best example
21 of an independent redistricting commission that
22 functions effectively. Since the creation of the
23 Independent Redistricting Commission in Iowa,
24 either the first or second version of the
25 redistricting plan created by the Legislative

1 Service Bureau have been approved by the
2 Legislature. Moreover, no Iowa redistricting
3 plan has faced a court challenge since the
4 creation of the Independent Redistricting
5 Commission. However, despite Iowa's litigation
6 record, since its enactment of an IRC, Iowa's two
7 thousand and one redistricting cycle shows the
8 limitations of an IRC's ability to take the
9 politics out of politics.
10

11 This is not new. Courts have long
12 recognized that politics and political
13 considerations are inseparable from districting
14 and apportionment, and districting without regard
15 for political impact may produce, whether
16 intended or not, the most grossly gerrymandered
17 district.

18 It is also important to consider that the
19 diversity considerations inherent in the
20 development of an independent redistricting
21 commission in Iowa, with a voting age population
22 that was ninety-five percent white, according to
23 the two thousand census, are not comparable to
24 New York's.

25 Finally, the inclusion of racial and

1 language minority persons in the redistricting
2 process is particularly important. However, the
3 first step to achieve racial diversity is not at
4 the stage where the commission members are
5 selected from the nominations pool to serve on
6 the commission, but at the stage where
7 individuals are selected to comprise the forty-
8 person nomination pool. If the nomination pool
9 is not diverse it is much more difficult, if not
10 impossible, to have a resulting commission that
11 is diverse.
12

13 In addition, persistent problems with
14 residential segregation in New York, as in many
15 other parts of the country, alter the practical
16 ability to create a diverse pool, or a diverse
17 commission, while insuring geographic
18 representation. A seemingly innocuous requirement
19 that members of the commission reflect,
20 geographic diversity of the state to the extent
21 practicable, without recognizing persistent
22 racial discrimination throughout the state can
23 limit any goal of diversity.

24 Moreover, the over representation of
25 homogeneous population can also distort the

1 diversity of the pool, and the ultimate diversity
2 of the commission. Instead, the nomination pool,
3 like the commission, should seek to achieve
4 racial diversity that is representative of the
5 state as a whole. I know that the GNR's proposal
6 does have that goal for the diversity of the
7 commission, so it would be added for the
8 nomination pool.
9

10 In conclusion, the aim for the future
11 must not simply be for redistricting in New York
12 to just be different, but more fair. As
13 experiences in other states have shown, the IRC's
14 are not panacea's, but rather, particular
15 approaches that can be calibrated to have
16 greater, or lesser chances to achieve fair
17 results.

18 The political sphere is resilient and
19 competitiveness within it is subject to frequent
20 reinterpretation. From the perspective of
21 minority voters and voting rights advocates, the
22 assessment of IRC should not be taken lightly,
23 and itself must embody the heightened
24 transparency and careful deliberation that
25 advocates hope to achieve for redistricting in

1 the future.

2
3 I appreciate the committee listening to
4 this issue. I have additional points in the
5 written testimony, but because of time
6 constraints I won't be able to finish. I look
7 forward to your questions.

8 ASSEMBLYWOMAN DESTITO: Thank you.
9 Mr. Espaillat?

10 ASSEMBLYMAN ESPAILLAT: You mentioned
11 that the Arizona model, while it practice
12 approved to potential disenfranchise ten
13 communities of common interest that have been
14 traditionally represented, or that wanted to have
15 representation from those particular communities.

16 You mentioned something in your testimony about
17 the Arizona model versus the California model and
18 how the Arizona model proved to be not as
19 supportive of guaranteeing that communities of
20 common interest could strive to have a
21 representation of their own.

22 MS. GARRETT: The reference to the
23 Arizona model was to the state legislative plan.

24 The Department of Justice objected to five
25 districts, included in that plan, because it had

1 a retrogressive effect on the Latino voters in
2 the state.

3
4 The connection that I was drawing between
5 Arizona and California is that when the
6 individuals, who are actually participating in
7 the process, have an understanding of how those
8 things are supposed to work together, it reduces
9 the possibility of that type of outcome. I think
10 that what this proposal should strive for is not
11 to draw districts that would meet objections by
12 the DOJ, but districts that do not wind up
13 meeting objections by the DOA. By establishing
14 criteria without explaining how to have the
15 criteria work together, you run into a problem
16 where, and I think the gentleman from Arizona
17 spoke about personal ideas, about their goal of
18 competitiveness and those types of things
19 conflicting with how to achieve the requirements
20 under the Act.

21 ASSEMBLYMAN ESPAILLAT: Thank you.

22 ASSEMBLYWOMAN DESTITO: Mr. Gianaris.

23 ASSEMBLYMAN GIANARIS: I just have
24 two questions for you.

25 First, on the testimony with respect to

1 the Voting Rights Act that the language not be
2 just one simple statement that the Voting Rights
3 Act is important, but a more detailed approach, I
4 anxious to make sure that that's the case as
5 well, so if the NAACP has any specific proposals
6 or language, I'd be anxious to receive those in
7 terms of how we can deal with that in the
8 legislative proposal.

9
10 MS. GARRETT: We don't have anything
11 drafted yet.

12 ASSEMBLYMAN GIANARIS: Whatever you
13 can give us would be helpful.

14 Second, I just want to make a quick
15 point. The language with respect to racial,
16 ethnic and gender diversity is actually in the
17 proposal as applying to the nomination pool, as
18 well as the committee.

19 ASSEMBLYWOMAN DESTITO: No further
20 questions, thank you. Sorry.

21 ASSEMBLYMAN ESPAILLAT: Has the NAACP
22 taken a position on how we should count
23 prisoners?

24 MS. GARRETT: The legal defense fund
25 has not taken an official position. My

2 colleague, Juan Cartagena, and other individuals
3 from the Community Services Society will testify
4 to that today.

5 ASSEMBLYWOMAN DESTITO: Thank you
6 very much for coming. We will ask Hakeem
7 Jeffries, Esq., from the Fifty-seventh Assembly
8 District.

9 MR. JEFFRIES: To Assemblyman
10 Espaillat, Assemblyman Gianaris, other
11 distinguished members of the Assembly, good
12 afternoon. Thank you for this opportunity to
13 testify on this very important issue that relates
14 to the future of our representative democracy
15 here in New York State. My name is Hakeem
16 Jeffries and I am the Democratic nominee to the
17 New York State Assembly, Fifty-seventh Assembly
18 District, and I look forward to joining you in
19 Albany in January and representing the
20 neighborhoods of Fort Green, Clinton Hill,
21 Prospect Heights, parts of Crown Heights and
22 parts of Bedford Styvesant.

23 In two thousand I was a candidate for the
24 New York State Assembly challenging a powerful
25 twenty-year incumbent, who was backed by the

1 local Democratic organization. At that time I
2 had no name recognition, no prior political
3 involvement, no money in the bank and ran an
4 active campaign. Eventually, I obtained over
5 forty percent of the vote, which, apparently, was
6 of concern to any number of individuals.
7

8 Two years later I received a call in
9 February of two thousand and two from a colleague
10 who said, Hakeem, the lines have been redrawn and
11 your house has been cut out of the district by a
12 block. I went to bed that night in the Fifty-
13 seventh Assembly District and woke up the next
14 morning in the Fifty-second.

15 We'll never be able to determine what was
16 done in terms of whether the redrawing of the
17 lines was intentional, or coincidental, but what
18 we do know is that it helped to feed,
19 unfortunately, the cynical attitude that some
20 members of our citizenry have towards New York
21 State government.

22 Now, what happened to me, as an
23 individual should not be of concern. Ultimately,
24 I was able to move back into the district, run
25 again for the seat and prevail in a Democratic

1 primary. But the broader concern, I think, is
2 what happens to a community when lines are
3 redrawn with the possibility of some political
4 involvement.

5
6 Prior to the lines being redrawn, I
7 represented the community of Prospect Heights,
8 which was represented largely by one Assembly
9 member. Subsequent to the redrawing of the
10 lines, Prospect Heights, which was where I
11 resided, was carved essentially, into two
12 Assembly districts, two-thirds in the Fifty
13 Seventh, and one-third into the Fifty Second. As
14 a result, you had a Prospect Heights community,
15 which is very small and intimate, only nineteen
16 thousand in number, that shared the same public
17 safety concerns, shared the same education
18 concerns, shared the same concerns in terms of
19 transportation or development issues, but now had
20 to petition two different representatives.

21 I stand here today just to testify that
22 in a consideration of how to move forward in
23 redrawing lines, I would urge the members of this
24 committee to consider using a Community of
25 Interest standard, which would require those

1 individuals who are drawing the lines to pay
2 attention to factors which relate to areas of
3 concern to the community, as opposed to political
4 concerns, and I would just suggest five.

5
6 One, I think wherever possible, we should
7 pay attention in making sure that the community
8 within the Assembly district share the same
9 police prescient. I think we should pay
10 attention to making sure that the communities
11 within an Assembly District share the same
12 firehouse, share the same school district, share
13 the same means of mass transportation and,
14 whenever possible, share the same geographic
15 boundaries. I would submit that by using this
16 Community of Interest standard, it makes it
17 easier to ensure that whatever political agenda
18 someone may have in the redrawing of the lines
19 are tempered by the use of factors which would,
20 we hope, guarantee that the communities that fall
21 within an Assembly District or Congressional
22 District, or a Senatorial district, share a
23 common set of concerns and can petition the same
24 member wherever possible.

25 Thank you for this opportunity.

ASSEMBLYWOMAN DESTITO: Thank you Mr. Jeffries. We look forward to working with you. Any questions?

We'll call on Mr. Arthur Eisenberg, Legal Director, New York Civil Liberties Union.

MR. EISENBERG: Good afternoon. Firstly, I'd like to thank the Committee for holding these hearings into this vitally important matter.

I've submitted written testimony, which I hope will become part of the record of these proceedings. In my oral presentation I would just simply like to make three basic points, with a few subsidiary observations.

First, I think it's important to recognize that political gerrymanders are deeply at odds with fundamental Constitutional principles. That Constitutional principle holds that in administering elections, governments have an obligation of neutrality. This principle of neutrality finds its precedential source in a long line of free speech cases and voting rights cases, which are elaborated on in my written submission, and I won't waste the Committee's

time at this juncture in describing them.

The neutrality principle also reflects common sense. If the state were to buy elections machines that recorded the votes only for Democratic candidates and not the Republican candidates, we would all understand that that kind of behavior would violate some basic notion of neutrality in the administration of the elections. And yet, in drawing district lines, to skew political outcomes to favor particular partisan interest, the state is engaged in a similar violation of neutrality principle.

My second point is that the Supreme Court's recent decisions, relating to political gerrymandering, should not be misread. The two cases, the Pennsylvania case and last term's Texas case involve holdings in which the Court ultimately concluded that it had not arrived at a judicially manageable standard for adjudicating claims of political gerrymandering, but the Court did not turn its back on the Constitutional norm of neutrality, as I've articulated. Indeed, a majority of the Court, even as it concluded that the cases were not distinguishable in those

1 particular circumstances, a majority of the Court
2 recognized the vitality of the constitutional
3 commitment to neutrality. Indeed, Justice
4 Scalia's decision in the Pennsylvania case,
5 clearly recognized that excessive political
6 intrusion into the district line drawing process
7 would raise serious constitutional problems, even
8 as he dismissed the claims in that Pennsylvania
9 case.
10

11 As a consequence of the Supreme Court's
12 decisions, they have created what scholar's call
13 an under enforced constitutional norm. That is
14 to say, a constitutional norm that doesn't lend
15 itself to judicial solution, but then
16 nevertheless imposes a task on the Legislature to
17 correct the constitutional violation. In some
18 sense that's why we are here today, and I think
19 each of the legislative proposals before the Task
20 Force is to be commended for the pursuit of that
21 important goal.

22 My third point is, that in fashioning a
23 cure to the problem of political gerrymandering
24 the key must be to create an independent
25 apportionment commission and to keep it insulated

1 from partisan and political influence to the
2 degree possible.

3
4 In that regard, the New York Civil
5 Liberties Union endorses three mechanisms to
6 reinforce such independence.

7 First, we think that the two-step process
8 proposed by the Gianaris bill, which would create
9 a pool of eligible individuals, and a diverse
10 pool of eligible individuals to serve as
11 potential commissioner on the ultimate
12 reapportionment committee, is an excellent idea,
13 and move in the direction of creating
14 independence.

15 But, we are concerned about the second
16 step in the process, because the second step in
17 the process allows legislative leaders to appoint
18 the actual composition of the committee, and we
19 think that simply reinjects politics back into
20 the process. One alternative solution, which
21 sound a little bit quirky at first, is to create
22 an eligible pool of the sort that the Gianaris
23 bill does, but then ultimate choose the final
24 commissioners, eleven commissioners, if that's
25 the right number, to be chosen by lottery. It

1 eliminates one important aspect of political
2 intrusion into the process.

3
4 Second, we agree with the Iowa approach,
5 which allows the redistricting commission to make
6 proposals to the Legislature, which the
7 Legislature can only vote up or down. Again, the
8 Gianaris proposal moves in that direction, but,
9 as my friend Richard Emery pointed out, at the
10 third phase it allows the reinjection of politics
11 into the process, because in the third phase,
12 with respect to the third plan, the Legislature
13 can make amendments.

14 We would urge an up or down vote, and
15 then if there is a legislative impasse, the court
16 can perform the usual judicial functions. I
17 agree as well with Mr. Emery's observation that
18 to ask the Court to essentially perform a
19 legislative function, may raise serious
20 separation of powers problems and improper
21 delegation of authority problems, but the
22 solution would simply be to declare an impasse
23 after the rejection of the third plan, which
24 would leave to the courts the performance of
25 things that courts do, which is decide cases.

1 That circumstance, presumably, because it was
2 behaving as a court, it might not be limited to
3 three plans that were proposed by the commission,
4 but we believe in that approach.

6 Finally, we have an additional suggestion
7 with respect to the way a reapportionment
8 commission operates. In that regard, we urge the
9 committee to think about imposing the ethic that
10 is imposed upon judges, namely that they cannot
11 communicate about the merits, the substance of
12 their redistricting plan outside, of the
13 commission's process. The commission's process
14 should be open, as the Gianaris proposal
15 suggests, but there should be a process, and all
16 of the proposals should come in through that
17 formal process, and there ought not to be party
18 communications, unilateral conversations with
19 politicians over the particular content of the
20 proposals.

21 With those three suggestions in mind, I
22 will end my testimony here, urge the Committee to
23 read the written submission, and thank this
24 Committee for its time.

25 ASSEMBLYWOMAN DESTITO: I don't see

1 any questions; we just thank you for giving us
2 your testimony and also concisely giving to us
3 verbally. Thank you.

4
5 Next, we'll ask Joan Gibbs, Esq., General
6 Counsel, Medgar Evers College Center for Law and
7 Social Justice.

8 MS. GIBBS: Good afternoon. My name
9 is Joan Gibbs and I'm the General Counsel for the
10 Center for Law and Social Justice at the Medgar
11 Evers College.

12 The Center, for those of you who may not
13 be familiar with us is unit of Megar's College of
14 the University of New York. It is an advocacy
15 institution, and it focuses on voting rights as
16 educational equity issues in the creation of
17 criminal justice in New York City. The Center
18 has represented the interest of black voters
19 since its inception in nineteen eighty-five. We
20 advocated before the New York State Legislative
21 Task Force and done graphic research on
22 reapportionment and litigated in both the
23 nineteen eighty-two and the two thousand and two
24 redistricting processes.

25 In both processes we were successful in

1 suggesting, or strongly influencing the creation
2 of the final Assembly and Congressional district
3 plans for New York City. In addition, our
4 Executive Director, Esmeralda Simmons, has served
5 on the independent commission established by the
6 New York City Charter to administer the
7 redistricting process for the New York City
8 Council. Although no public officials sat on
9 this seven-member commission, the members were
10 directly appointed to the commission by major
11 elected officials from the majority and minority
12 political parties. Therefore, partisan interests
13 were clearly recognized and represented at the
14 table. In her opinion, the criteria established
15 for districting were commendable. During her
16 tenure on the New York City Districting
17 Commission in its virgin run in nineteen ninety
18 to nineteen ninety-two, the districting mandates
19 of the VRA were respected.
20

21 As a member of the New York Voting Rights
22 Consortium, which has also tested fine here
23 today, I'm going to limit my remarks to make a
24 couple of points.

25 First, while we applaud the seeming

1 interest in addressing the perceived conflict of
2 interests under LATFOR, whose six members are
3 appointed by legislative leaders from both sides
4 of the aisle, and in efforts to create more
5 competitive elections, partisan fairness, the
6 pending bills we believe would do none of these
7 things.
8

9 As for competitive elections, true, as
10 many are fond of pointing out, only thirty-four
11 incumbents have been defeated in general
12 elections in New York State in the past twenty-
13 four years. People, vote, or not vote,
14 unfortunately, not districts. Independent
15 commissions alone will not guarantee more
16 competitive elections. No one today, for
17 example, has claimed that the IRC's increase
18 voter turnout, which are critical to the failure
19 for insurgents to be incumbent. Moreover,
20 neither Arizona nor Iowa, which are often touted
21 by redistricting reformers for having adopted
22 independent redistricting commissions, have
23 particularly competitive elections.

24 In Arizona, for example, fifteen of the
25 sixteen U.S. House races have been won by

1 landslide margins of more than twenty percent
2 since its independent redistricting in two
3 thousand and one, and no incumbent has really
4 come close to losing. None of the thirty state
5 senate seats, according to our research, were
6 really competitive in two thousand and four, and
7 almost half were uncontested. In Iowa's, all of
8 its U.S. House of Representatives incumbents were
9 reelected in two thousand and four. Iowa's
10 incumbency rate has been nearly ninety-eight
11 percent since the adoption of independent
12 redistricting.
13

14 Furthermore, competitiveness and fair
15 representative are mutually exclusive. The
16 competition envisioned by the champions of the
17 redistricting reforms is premised in the drawing
18 of "ideal, narrow partisan districts", where, for
19 example, fifty percent of each district would
20 favor one major party and fifty percent would
21 favor some other, or in some other mathematical
22 calculation yet to be put forth, sixty-six
23 percent of the population would favor the major
24 parties and thirty-three percent would be others.
25 The imbalance of partisan divisions here in New

1 York City however, makes the drawing of such
2 ideal districts impossible.

3
4 More to the point, are narrowly drawn
5 partisan districts even a desirable goal, as half
6 of the population in each district would then, at
7 the end of the election, would not be represented
8 by a candidate of their choice. Even more
9 troubling to us, such narrow partisan districts
10 would certainly make more difficult if not
11 impossible for Blacks, Latinos and Asians to
12 select the candidates of their choice as required
13 by the Voting Rights Act.

14 While LATFOR has its problems, over the
15 past twenty-eight years under LATFOR's watch, New
16 York States racial and protected language
17 minorities have steadily increased their numbers
18 of majority Black, Latino and Asian Assembly and
19 State Senate single member districts, as well as
20 their number of influence district. This is
21 largely because of the emphasis placed on
22 compliance with the VRA criteria. That emphasis
23 has been paramount after the constitutional
24 requirement of one person, one vote criteria,
25 largely because, again, three of New York City's

1 counties are covered by Section Five of VRA and
2 therefore, changes in those districts must be
3 precleared by the federal Justice Department, or
4 a federal District Court before being
5 effectuated.
6

7 Our concern, in short, is that we respect
8 each of the proposals. The selection process and
9 the criteria of drawing lines are unclear. We
10 are concerned that any redistricting commission
11 that is established reflects New York State, and
12 particularly New York City's racial diversity.

13 Assembly bill Six Two Eight Seven, which
14 would establish alternately an eleven-person
15 commission, is predicted, in our view, to be a
16 cumbersome and ultimately unfair selection
17 process, and particularly, it calls first for the
18 selection of a nominating committee. They would
19 then choose members of a nomination pool from
20 seven regions. New York City, which was the
21 engine behind the growth of New York State's
22 population in the last census, and is surely
23 likely to be the same in the next, is only one
24 among the seven regions.

25 Finally, the proposals leave unaddressed,

1 the problems the U.S. Census and misallocations
2 of New York State prisons, the overwhelming
3 number of whom come from and return to New York
4 City.
5

6 I thank you for your time and your
7 attention.

8 ASSEMBLYWOMAN DESTITO: Thank you.
9 Mr. Benjamin.

10 ASSEMBLYMAN BENJAMIN: Joan, hi.
11 It's good to see you here again.

12 You mentioned in your testimony the New
13 York State Constitutional requirements, the
14 nearly two dozen political and natural geographic
15 requirements that have an effect. Are those
16 requirements, to you, unconstitutional?

17 MS. GIBBS: The constitutional
18 requirements?

19 ASSEMBLYMAN BENJAMIN: Yes, has it an
20 effectively negatively on the commissions of
21 districts?

22 MS. GIBBS: I would say some of them
23 are, and I think some of them are to the extent
24 that they have an impact on the way districts are
25 drawn. For example, the prohibition against

1 crossing county borders, rivers, and mountains
2 and things of that nature, I think are certain
3 points that could be unconstitutional.
4

5 ASSEMBLYMAN BENJAMIN: Can any of
6 these things be cured with having a
7 constitutional amendment?

8 MS. GIBBS: No, it can't be cured on
9 a constitutional amendment.

10 ASSEMBLYMAN BENJAMIN: One last
11 question. On the issue of retrogression, should
12 that be a criteria for the establishing of
13 legislative districts?

14 MS. GIBBS: The question of whether
15 or not the voting strength and representation of
16 Blacks, Latinos and Asians should be paramount,
17 whether this weakens, in any plan, should be
18 paramount consideration, both in development of
19 the plan and in the plan itself.

20 ASSEMBLYMAN BENJAMIN: Lastly, your
21 point about the commission having representatives
22 from seven New York State regions, and the fact
23 that the population growth comes from New York
24 City, New York City is the engine for the state,
25 how would you cure that?

MS. GIBBS: How would I cure that? I would probably divide it differently. I would not have those regions, because New York City, as I understand it, New York City makes up a substantial portion, which should have representatives on the commission equivalent to its percentages of the population, and keep it with the one person, one vote requirement. It shouldn't be that, New York City was said to have over seven million people, and then the other regions do not have that population. If it did New York State's population would be explosive.

ASSEMBLYMAN BENJAMIN: Is there any rational reason for having regional representation, other than trying to be inclusive?

MS. GIBBS: I guess the person who wrote it figured it would create more geographical diversity, that's all I think I could see in it, which I think is less reported than racial diversity.

ASSEMBLYWOMAN DESTITO: Thank you very much. Next, we'll call on Juan Cartegna, the Co-Chair on New York's Voting Rights

Consortium.

MR. CARTEGNA: Good afternoon, thank you. I am the Co-Chair of the New York Voting Rights Consortium, and also General Counsel to the Community Service Society. I'm actually here today to present the views of the Consortium, a non-partisan coalition of local and national organizations and individuals, which include the NAACP Legal Defense Fund, the Asian American Legal Defense Fund, the Center for Law and Social Justice, the Community Services Society, the National Institute for Latino Policy and the Puerto Rican Legal Defense and Education Fund and finally, the Majority Coalition of Redistricting Professionals.

Effectively, we stand for the population for the full enforcement of federal and state laws that protect the voting rights of people of color, and language minorities.

I want to thank the Assembly Committee on Government Operations for holding hearings on the important issue, and for doing so in a timely and orderly manner now, so early in the process, before the next round of the census.

1 We've had an opportunity to study some of
2 the legislative proposals, namely the one
3 advanced by Assemblyman Gianaris. We've also
4 engaged in some preliminary discussions as a
5 consortium with other advocates and good
6 government groups that have taken these proposals
7 very seriously, and we want to thank them as
8 well.

9 Redistricting, as we all know, is a messy
10 affair. We all know this very well, rarely do
11 parties our people on both sides of the issue see
12 eye to eye, and plans are often devised that end
13 up in court. We all know that very well,
14 including the members of our consortium.

15 From our perspective, the ability of the
16 state to enact plans and other voting and
17 election law reforms, that fully and fairly
18 reflect the growing voting strength of our racial
19 and language minorities, has been sorely tested.

20 Indeed, many consortium members contributed to
21 the issuance of the report I drafted, Voting
22 Rights in New York Nineteen Eighty-two to Two
23 Thousand and Six, which we submitted to Congress
24 in its recent deliberations over the Voting
25

1 Rights Act, and it details the history of non-
2 compliance and the current state of compliance
3 with this critical tool of voting rights
4 protections. I urge the Committee to review the
5 report in its entirety and will be glad to make
6 those copies available upon request. It's an
7 expensive and length report, but I think its
8 really good background.

10 ASSEMBLYWOMAN DESTITO: If you could
11 give just one report to our committee that would
12 be very helpful.

13 MR. CARTEGNA: I certainly can.

14 I will cite therefore, a couple of points
15 in the report regarding the numerous practices
16 and laws that continue to impede the ability of
17 the State's racial and language minorities from
18 gaining fair representation. Racially polarized
19 voting is still a feature of many of our
20 elections; intimidation at the polls, especially
21 against Asian American voters still occurs; the
22 deployment of federal observers is still a
23 feature of New York City elections, and New York
24 outside of the other jurisdictions, for the
25 language especially.

Section Five objections and withdrawal of submissions at the Department of Justice, more information request letters all speak to the need to monitor enforcement.

Accordingly, compliance with the Voting Rights Act norms is as important today as it was in nineteen sixty-five. To this end, we refer the Committee to the testimony of the NAACP Legal Defense Fund, which you just heard, on the question of how competitive districts and "Communities of Interest" districts had to be squared in the first instance with the Voting Rights Act.

Regarding competitive districts, the competition in the field of redistricting needs to be further defined in light of our concerns. Regarding the opportunity to elect districts, as per the current jurisprudence under the Voting Rights Act need to also be considered.

The consortium also respectfully refers the Committee the testimony of the Community Service Society on a related issue that is not on the table as of yet, but we've heard it this morning and today very frequently. The reliance

1 for redistricting purposes on residency rules
2 that robs down state communities of their full
3 voting strength by counting state prisoners as
4 residents of their upstate prisons. Under New
5 York law, a person neither gains nor loses his
6 residency as a result of incarceration. Yet the
7 failure of the State to adjust this census data
8 does exactly that. It is very difficult for the
9 consortium to envision a debate over
10 redistricting without addressing this particular
11 policy.
12

13 As a consortium we just want to make
14 three more points and then I'll end.

15 One. The creation of new nomination
16 pools, and subsequent apportionment commissions,
17 must be done in a way that ensures the direct
18 participation of racial and language minorities.

19 In light of the additional proposals to carve
20 out a direct role for the New York Court of
21 Appeals in breaking stalemates, it is important
22 to note that currently there are no African
23 American jurists on that court, making our
24 concern about diversity on any new advisory
25 bodies even more important. We have studied some

1 of the language in the Gianaris proposal and it
2 goes in the right direction in this regard, but
3 it can be improved, especially with respect to
4 the New York City region, and how they're
5 represented. Proportionately should be the best
6 way to do it.

7
8 Two. There is insufficient information
9 in the proposals to assess how new nomination
10 pools and new commissions will receive budgetary
11 appropriations to do the work necessary to create
12 fair plans. We have seen one reference in the
13 legislature's proposal in the Gianaris bill to
14 fix the compensation of commission members.
15 That's the only reference that I've seen, but it
16 needs to be specified how the appropriations are
17 made in advance. Otherwise, the necessary work
18 will be beholden to the desires of incumbent
19 representatives who hold the purse strings.

20 In fact, this morning, they didn't know
21 that the Arizona proposal has a budgetary
22 allocation already embedded in the constitution.

23 I think that issues of how these things get paid
24 for have to be stated up front.

25 Three. We commend the proponents of

1 increased access to redistricting plans on line,
2 and ask that the Committee also considers
3 ensuring that access be done in a way that voting
4 rights advocates can manage the statistics and
5 tables of data so as to devise their own
6 redistricting proposals. Access to this critical
7 data in other formats, such as pdf files, will
8 not facilitate the creation of community based
9 redistricting plans. It's not so much as to put
10 it on the site; it also requires the ability to
11 manage at bat if you come up with your own plan.

12
13 I want to thank the Committee for
14 allowing the Voting Rights Consortium to address
15 these important issues and hope to continue to
16 participate in these deliberations when the need
17 arises.

18 Thank you.

19 ASSEMBLYWOMAN DESTITO: Thank you.
20 You've raised a lot of good questions. We
21 appreciate that and will make sure that the
22 authors of the legislation understand the
23 concerns.

24 Mr. Benjamin has a question.

25 ASSEMBLYMAN BENJAMIN: Just one

1 question.

2
3 You're the third person to make mention
4 of the residency of prisoners, those who are
5 incarcerated in upstate communities and are
6 counted toward those political boundaries. What
7 would be the effect if that were taken away?

8 MR. CARTEGNA: In other words, if the
9 census were adjusted to allow for the count in
10 home districts?

11 ASSEMBLY BENJAMIN: Yes.

12 MR. CARTEGNA: You're likely to
13 create the possibility of more districts
14 downstate. You know other districts have to be
15 fairly and equally apportioned right, with equal
16 numbers with some deviations. The likely result
17 would be perhaps an additional senatorial
18 district downstate, depending on the numbers,
19 maybe an additional Assembly district that's
20 anchored downstate.

21 ASSEMBLYMAN BENJAMIN: How many
22 prisoners are we talking about, sixty-five
23 thousand or so?

24 MR. CARTEGNA: Yes, slightly less
25 than sixty thousand. I'm thinking in total

1 between prisoner and parolees, my recollection is
2 close to one hundred and twenty-five between the
3 two of them.
4

5 ASSEMBLYMAN BENJAMIN: I'm sorry, you
6 answered parolees. Parolees already live back
7 home.

8 MR. CARTEGNA: That's right, but
9 remember they can't vote because of
10 disenfranchise laws.

11 ASSEMBLYMAN BENJAMIN: That's a
12 separate though.

13 MR. CARTEGNA: That's a separate
14 issue. One that is very close to my heart as
15 well.

16 ASSEMBLYMAN BENJAMIN: Issues that
17 you and others have raised have to do the
18 residency of how the prisoners are counted, in
19 their home communities or in the communities
20 where the prisons are. The effect that upstate,
21 those upstate communities that count, Auburn or
22 another facility, towards the Assembly or
23 Congressional districts, would that have the
24 effect of trading districts upstate that are
25 large geographically, that they had to stretch

out further to find similar numbers of people?

MR. CARTEGNA: Not necessarily geographically as opposed to the population - you get a prison that has, let's say, forty thousand inmates, your talking about forty thousand bodies. You're not picking up forty thousand opinions that you need to cater to.

ASSEMBLYMAN BENJAMIN: That's my other question, the issue is also one of justice for persons who are counted towards districts, but they receive no services in return, and when they leave the prison and go back home, the resources for job training, etc. that helps a person to reintegrate into their home community is not available because its with their body, or former body in that upstate community, that's not true.

MR. CARTEGNA: That is correct. If the individuals were allowed to vote, then their opinions would be taken a lot more seriously.

ASSEMBLYMAN BENJAMIN: I have two bills in that address these issues.

ASSEMBLYWOMAN DESTITO: Thank you very much.

Mr. Dick Dadey, Executive Director of the Citizens Union.

MR. DADEY: Good afternoon. My name is Dick Dadey and I'm the Executive Director of Citizen Union. I am joined by Sydney Beveridge, CU's policy associate who assisted me in preparing today's testimony and will be available to answer any questions.

Citizens Union is a citywide, independent, non-partisan civic organization dedicated to promoting good government and political reform in the city and State of New York. We are pleased to not only present our testimony today, but also to make possible the appearance of Steve Lynn, and also Peter Wagner.

We invited and encouraged both to testify today to assist New Yorkers in becoming better informed about how one state has addressed redistricting reform and how the counting of prisoners impacts the drawing of district lines. We applaud the Assembly and all the appropriate folks in convening this hearing.

Elections are supposed to offer choices to voters in their representation, but too often

1 the choices are either limited or nonexistent.
2
3 Unfortunately, the winners of far too many New
4 York State legislative elections are preordained
5 and by the power of incumbency, money and
6 gerrymandering, often serve in what become
7 permanent seats.

8 Sadly, New York State voters seldom have
9 the opportunity to vote in competitive
10 legislative elections and oftentimes only when an
11 open seat occurs. In fact, New York State's
12 legislature has one of the highest rates of
13 incumbency in the nation. Over the past twenty-
14 four years when over twenty-five hundred separate
15 state legislative elections took place, only
16 thirty-four incumbents lost their seats to
17 challengers in general elections. During that
18 same period of time, Republicans have controlled
19 the state Senate, and Democrats have controlled
20 the state Assembly without interruption as a
21 result of an unspoken deal between the Senate
22 Republicans and the Assembly Democrats.

23 In his recent book, former State Senator
24 Seymour Lachman characterizes the legislature's
25 role in redistricting as such, " giving the

1 ruling party in each chamber of the Legislature
2 the power to set district lines is akin to
3 contracting out construction of a fox-proof
4 henhouse to the chicken stealing fox.”

5
6 Derived from the same demographic data,
7 Assembly and Senate district lines can end up in
8 bazaar looking combinations with pieces of as
9 many as nine assembly districts in a single
10 senate district.

11 An effective for protecting Legislator,
12 gerrymandering can allow incumbents to select
13 their constituents and remove political
14 challengers.

15 Earlier you heard from Hakeem Jeffries,
16 who challenged nineteen-year incumbent Roger
17 Green in the Democratic primary in two thousand.

18 He won an impressive forty-one percent of the
19 vote, which was a rare and strong showing against
20 a long time incumbent. When the reapportionment
21 plans of two thousand and two were rebuilt the
22 district shifted a couple of blocks in Prospect
23 Heights and he was no longer located in the
24 Fifty-sixth District.

25 The splicing of Prospect Heights was a

1 disservice to residents on two counts. First, it
2 split a neighborhood and its natural ties, and
3 second, it actively kept competition out,
4 undermining the health of the Democratic process.

5 For candidates wishing to enter the system, such
6 as Jeffries, it was a blow to the opportunity to
7 run for an office, having everything to do with
8 preserving power and nothing to do with the
9 candidate's merit, or a voter's choice.

10
11 Such political gerrymandering has the
12 effect of squashing legitimate competition, and
13 with it the integrity of the Democratic process.

14 You've heard what happened in two
15 thousand and four when Roger Green was found
16 guilty of petty larceny charges and was forced to
17 resign from the Assembly, which he did at the
18 last minute and prevented Jeffries from entering
19 the race because he still lived outside of the
20 district. Only months later, Green won,
21 unopposed running in the primary. Eventually, he
22 lost his unsuccessful bid this last fall, while
23 Jeffries, having moved into the district, won
24 with sixty-four percent of the vote.

25 One related example, involves former

1 Senator Guy Velella and Senate District Thirty-
2 four. Though redistricting changes are often
3 subtle and for a combination of reasons, the
4 manipulations of this race and Guy Velella's
5 district appear to be blatant political
6 maneuvers, such as borrowing territory from a
7 strong Republican incumbent neighbor and cutting
8 a potential challenger out of the boundaries.
9 Lorraine Koppell, who challenged Velella in two
10 thousand, and was expected to challenge him in
11 two thousand and two, described the districting
12 change in her neighborhood that removed her
13 residence as, "Think of a balloon, and how when
14 you put your finger in a balloon, it changes
15 shape. That was the district, and that part of
16 the balloon where your finger would be was my
17 house."

18 Gerrymandering has also been used in
19 attempts not only to protect an incumbent, but
20 also to undermine fair and defective minority
21 representation. Consider the gerrymandering that
22 took place during the nineteen ninety-two
23 redistricting process in which an Assembly
24 district in northern Manhattan was drawn to
25

1 protect a white incumbent, and in doing so
2 disenfranchised Dominican voters from having a
3 fair change of electing a potential Dominican
4 Assembly member. The approval of the
5 redistricting plan was not granted by the U.S.
6 Justice Department because of this blatant
7 gerrymandering. A new and more fairly drawn
8 district was created so as not to disenfranchise
9 Dominican New Yorkers and four years later the
10 first Dominican American, Adriano Espaillat was
11 elected in nine ninety-six to the New York State
12 Assembly.
13

14 On the next couple of pages you'll see
15 some information about population variances and
16 how widely variant the population size of the
17 Senate and the Assembly districts are. For the
18 interest time constraints, I will not get into
19 the details, I would just ask you to refer to
20 that. Very few of the districts are drawn within
21 the two percent variance, and often times
22 approach the ten percent variance.

23 Let me turn for a minute, to the
24 consequences for democracy in New York in terms
25 of this gerrymandering. It's our belief that this

1 long-standing divide causes partisan gridlock,
2 contributes to a lack of dynamic public policy
3 debate in the state, and undermines the
4 possibility of truly competitive elections at the
5 local level. It also leads, in our view, to
6 declining voter participation at the polls,
7 because the choices are so few and the outcome is
8 a foregone conclusion.
9

10 Granted, there are many able, highly
11 attentive, extremely conscientious members of the
12 State Legislature who not only serve the state
13 well by virtue of their experience and their
14 expertise, but we are turned off because of their
15 performances as elected officials, and the
16 genuine support that they enjoy from their
17 constituents.

18 How is that to be determined when many
19 incumbent legislators are routinely elected
20 without any serious challenger and vigorous
21 engagement in a campaign?

22 Indeed, in two thousand and four, seventy
23 percent of New York City's legislators faced no
24 primary challenges at all, and more than a
25 quarter faced no general election challengers.

1 This is far different than having a competitive
2 election. I'm talking about simply contested
3 elections. Though there are twenty-six seats in
4 the State Senate representing New York City,
5 there are only eight primary races in the
6 recently held September primary election. Of the
7 sixty-five seats in the State Assembly, only
8 seventeen primaries were held, all but two of
9 which were for the Democratic primary. Most New
10 York City voters do not witness primary elections
11 for their State Legislative representatives. In
12 New York State the races are usually won by large
13 margins.
14

15 For the upcoming general election New
16 York City will have forty-six contested, but not
17 competitive races, and nineteen Senate races, but
18 many of them will not be competitive. Without
19 competitive elections, voters are unable to hold
20 elected officials accountable for their actions,
21 or inactions, and voter turnout suffers as a
22 result, with New York among the bottom five
23 states with the lowest voter turnout in the
24 country.

25 Though ideally Democratic,

1 competitiveness can never be guaranteed, but at
2 the same time the process of drawing district
3 lines should never blatantly discourage
4 competitiveness, undermine effective and fair
5 representation, or create institutional partisan
6 advantage.
7

8 I want to underscore this point. As we
9 look at redistricting reform, we know that we
10 cannot guarantee competitiveness, and that should
11 not necessarily be an important goal, but what
12 should be a very important goal is the fair
13 drawing of lines so as not to discourage
14 electoral competitiveness.

15 In terms of a framework for a solution,
16 Citizens Union lays out here many important
17 principles and aims which mirror much of what has
18 been said earlier today, and mirrors much of what
19 exists in the proposals before you, particularly
20 Assemblyman Gianaris bill. I just want to go on
21 the record that Citizens Union supports an
22 independent redistricting commission. We support
23 the development and use of fair and defined
24 guidelines that would limit the influence of
25 partisan interests during this process, and

1 protect against the manipulation of district
2 lines to favor or oppose any incumbent office
3 holder or candidate for office.
4

5 And, number three; we support a fair and
6 transparent reapportionment process that provides
7 for adequate public hearings.

8 Number four, a mechanism for passage that
9 encourages the approval of the independent
10 redistricting commission's plan with minimal
11 alterations by the Legislature.

12 As legislation is drafted and consider,
13 our organization specifically supports the
14 following steps to guide the apportionment of
15 congressional and state legislative districts,
16 and you'll see them enumerated here, one through
17 six. I just want to say that when you get to
18 number six, we strongly support, obviously, and
19 think that as required by law that in accordance
20 with Section Two of the United States
21 Constitution and the Voting Rights Act, that the
22 Voting Rights Act compliance needs to be the
23 overriding consideration in redistricting reform.

24 There are a number of other important
25 criteria that should be and need to be considered

1 as outlined here, all having to do with
2 compacting continuous territory, having
3 substantial quality of population, not to be
4 drawn with an intent to favor or oppose any
5 political party, not drawn with intent to
6 discourage electoral competitiveness and the
7 other criteria outlined there.
8

9 You know, in a future hearing to be held
10 in Albany, and mindful of the time already taken,
11 I would address, at greater length, two other
12 issues requiring further discussion. Let me say
13 today, that Citizens Union believes that
14 significant reform can be brought to the process
15 by which district lines are drawn, while securing
16 fair and effective minority representation that
17 meets, and even possible exceeds, what is called
18 for under the Voting Rights Act. We do not
19 pretend to know today how that can best be
20 accomplished, but are hopeful, by working with
21 our colleagues, and the good government, voting
22 rights and civil rights communities we can find a
23 solution acceptable to all.

24 While Citizens Union has not yet
25 developed a position on the issue of how

1 prisoners are counted for the purpose of drawing
2 district lines, we want to emphasize that no
3 reasonable solution can be found to redistricting
4 reform without addressing this issue, and we lay
5 out some information and statistics, and I'm glad
6 to see Assemblyman Espaillat sponsored a piece of
7 legislation in the Assembly, along with Senator
8 Schneiderman in the Senate that looks at trying
9 to fulfill the requirements of the New York State
10 Constitution. These discussions need to go on
11 and we were happy to bring this gentleman down
12 from Massachusetts, Peter Wagner, to address some
13 of these concerns and hopefully he will be more
14 available to you, not only today, but at other
15 opportunities.
16

17 Let me just say inclosing, that we do
18 support Assemblyman Mike Gianaris' bill and we
19 are happy to work with our good government
20 colleagues in having drafted that legislation,
21 but we have understood from the outset that this
22 bill was intended to start the discussion and
23 serve as the framework for reforming the process.

24 We also acknowledge that the ultimate solution
25 will be different from what is presently

1 contained in the Gianaris bill, but the Gianaris
2 bill will no doubt serve as the foundation from
3 which meaningful redistricting reform will take
4 place.

5 Thank you.

6 ASSEMBLYWOMAN DESTITO: Any
7 questions? Mr. Benjamin.

8 ASSEMBLYMAN BENJAMIN: I was reading
9 your testimony as you were speaking. Where you
10 mentioned your commissions should draw
11 congressional and state districts that are - then
12 you have lay out of seven or eight different
13 criteria - are they rank ordered? I believe
14 that's page eight of your testimony.

15 MR. DADEY: Clearly the first one in
16 the voting rights is ranked in order of priority
17 and with some minor tinkering they are listed
18 within order of priority.

19 ASSEMBLYMAN BENJAMIN: One last
20 question. I haven't asked the others about it,
21 but when you have an independent redistricting
22 commission, how do you ensure that its diverse,
23 and isn't the legislature already much more
24 diverse and more reflective of the population
25

1 interest of the state than IRC could be or would
2 be?
3

4 MR. DADEY: Yes, but I think that
5 they are driven - I think certain aspects of the
6 Legislature are diverse; I wouldn't say the
7 entire Legislature is diverse. You only need to
8 look at how Long Island is represented in the
9 State Senate to get an idea of how non-diverse
10 representation in the State Senate is for that
11 part of the state.

12 I think regardless of those
13 considerations, I mean there are partisan
14 considerations that the Legislature has taken
15 into account in drawing those lines, which I
16 think would hopefully not come into account by
17 the use of an independent redistricting
18 commission, that they would be more motivated
19 interest not to protect incumbents or to draw
20 lines according to any particular party, but
21 actually to draw them more fairly to allow for
22 more competition.

23 ASSEMBLYMAN BENJAMIN: If we had
24 rules that sort of restricted the political
25 influence or legislative influence, of particular

1 legislators for the drawing of their own
2 particular districts, would that be more helpful?

3 MR. DADEY: I think so, sure. I
4 think I cited three examples where incumbent
5 legislators were directly involved in ensuring
6 that their advantage was protected by drawing out
7 their opponents.
8

9 ASSEMBLYWOMAN DESTITO: Thank you Mr.
10 Dadey. Next we'll call on Blair Honer,
11 Legislative Director of New York Public Interest
12 Research Group and Rachel Leon, Executive
13 Director of Common Cause of New York.

14 MS. LEON: Good afternoon. I won't
15 read my testimony as it has been introduced in
16 other parts of the state, as we have sort of
17 followed you around, but we will, again, say that
18 we commend the Assembly for holding these
19 hearings. Obviously, especially for me today, the
20 content has been really, believe it or not,
21 actually been really interesting and important
22 and I think it has profound implications on our
23 democracy, so I hope the New York State Senate
24 will immediately follow suit with similar type
25 hearings across the state. I think they are

1
2 timely and I hope we can actually get to some
3 resolutions.

4 Again, I'm not going to read my
5 testimony. There's been a lot of talk today
6 about what matters more, the who or the what.
7 Who draws the lines or how, and I just want to
8 say that I think its so crucial who draws the
9 line. We wouldn't ask David Wright from the Mets
10 to referee and write the rules for a game that
11 he's playing in, and right now that's the
12 situation we have, where legislators are
13 basically drawing their own lines and ruling the
14 game and I think its leaving a lot of the public
15 out. I don't think it would be acceptable in
16 sports and I don't think it should be acceptable
17 in our democracy. I think we have to change the
18 who, and then the hard part, we have to get the
19 how right.

20 You've heard a lot of testimony today on
21 how to get the how right, you're going to hear
22 more from Blair. I'll just briefly state that we
23 do support an independent redistricting
24 commission as an approach to get that who and to
25 make sure that people involved in the game are

1 not drawing their own rules of the game. I hope
2 we'll continue to do that.

3 We also have a number of priorities that
4 we've endorsed with other groups that you've
5 heard a lot about today, so I'll just echo those
6 again.

7 We've also been bringing up the issue of
8 how we count prisoners across the state, and I
9 usually cite Peter Wagner, who you get to see in
10 person today, so I won't do that either, but I'm
11 thrilled that he's here and I think that any take
12 on redistricting that we approach in the coming
13 years is going to have to include this. Common
14 Cause doesn't have an official position on it
15 yet, but we will and we look forward to more
16 dialogue on this.

17 The only other thing I want to comment on
18 is people keep bringing up voter turnout and I
19 don't think we can expect changing redistricting
20 to be the panacea for all our ills. When the
21 Brenner Center released their report last week,
22 they quoted Al Smith who said that, the cure for
23 democracy's ills is more democracy and if we want
24 to have better voter turnout, we should fix
25

1 redistricting, but we have to do things like same
2 day voter registration and a host of other issues
3 if we want to get more people voting. We just
4 can't expect that one issue is going to solve all
5 other issues.
6

7 I'm happy to take questions, but I'll
8 turn it over to Blair.

9 MR. HORNER: Good afternoon. It's a
10 pleasure to be with you again. I'll echo some of
11 Rachel's comments. I certainly applaud the
12 Assembly for taking this issue seriously, and for
13 holding hearing across the state. As you know,
14 we've been very supportive of redistricting
15 reform and we applaud the efforts of Assemblyman
16 Gianaris and Assemblywoman Galef to advance
17 proposals to reform the system.

18 I think it's a really important issue,
19 obviously, and in a representative democracy how
20 you draw the lines is a critical issue and
21 deserves the attention that you have been giving
22 it. I think these hearings actually have been
23 incredibly important as well, because you're
24 getting an opportunity to hear from experts and
25 people who have insights into the system. You

1 may not get in a normal, slugfest that you might
2 have in the legislative process, but I think the
3 hearings have been very helpful, I think its
4 great the you folks have been holding them, you
5 deserve credit for doing that and for drawing
6 attention to this important issue.

8 I will not read my testimony. Let me
9 just make a few overall comments. As I've
10 testified before, for us the issue is who should
11 draw the lines, those with an interest in the
12 outcome, or those without an interest in the
13 outcome? It has to be those without an interest.

14 We think that's the fundamental measurement, and
15 so we support the idea of an independent
16 commission.

17 The current system, you'll see in our
18 testimony, has had an impact within the
19 population disparities, partisan enrollments,
20 I've testified to that before, I won't go over
21 them now. Assemblyman Espaillat asked in one of
22 the hearings about the New York City system. I
23 have some comments in here. New York City, as
24 you know, is a unicameral legislature, but the
25 creation of their commissions is quite different

1 from that envisioned in the Gianaris bill.

2 The Mayor has seven of the fifteen
3 appointments, which gives the Executive
4 extraordinary impact on the redistricting
5 process, which is not envisioned in the Gianaris
6 bill. Also, the standards that are used for
7 developing district lines in New York City are
8 different than the Gianaris bill. For example,
9 they can have large disparities in population.
10

11 On the back page of my testimony, Council
12 District Twenty-one has roughly one hundred and
13 eighty-two thousand people and District thirty-
14 five has one hundred thirty-five thousand people.

15 It's a huge difference in population. Again, we
16 have not studied this to know if we think that's
17 a good or a bad thing, but there are differences
18 in the New York City experience, not that because
19 its unicameral, but there are different standards
20 in the creation of the commission itself. We
21 think the Gianaris approach is the place to start
22 the conversation. We support the bill, we like
23 the fact that its an independent commission, that
24 it has standards, that it's a transparent
25 process, but as Rachel mentioned, we don't view

1 it as a magic bullet for all ills. There are
2 other solutions that we advance in terms of
3 campaign finance, voting reform and other
4 proposals, but we think again, who at the end of
5 the day should be in charge of drawing the lines.
6 We think an independent commission.
7

8 We again thank you for the opportunity to
9 testify and if you have any questions we'll try
10 to answer them.

11 ASSEMBLYMAN ESPAILLAT: Thank you.

12 Our next testimony will come from Justin Levitt,
13 Associate Counsel and Kahlil Williams, Policy
14 Analyst from the Brennan Center for Justice.

15 MR. LEVITT: Thank you very much for
16 the opportunity to testify before you here today.

17 I am here, as you mentioned, with Kahlil
18 Williams, from the Brennan Center. Thank you for
19 your hospitality and, at this time, for your
20 stamina. This is a very important topic and we
21 certainly commend the Assembly, as have the other
22 speakers, for bringing this topic to light and
23 having public hearings throughout the state,
24 especially in a timely fashion, as some of the
25 others indicated. There is still plenty of time

1 before the next redistricting session gets under
2 way to implement some meaningful reform and we
3 are very, very pleased that the Assembly is
4 taking steps to do so.

5 I also will not read my written
6 testimony, which I hope that you have. I will
7 take out several important key points that we
8 would very much like the testimony to reflect and
9 the Assembly to consider.

10 Basically, as you all know, New York's
11 structure involves an advisory body, like several
12 other states, but also different from several
13 other states. The Legislature really has the
14 primary responsibility. The advisory body, as you
15 know, is partisan by design, and plans are
16 developed with extensive input of individual
17 legislators. The result is that it looks like
18 there is an opportunity for individual
19 legislators to design their own districts in
20 custom fashion. That looks like a foul ball to
21 the rest of the population.

22 There's temptation, even under the most
23 benign purposes and motives for individual
24 legislators to design their districts to
25

1 artificially insulate them from a competitive
2 challenge. Even if legislators forego that
3 temptation, the system that allows, and
4 encourages in fact, legislators to design their
5 own districts, will appear as if legislators are
6 designing their own districts to insulate from
7 effective challenge, and will foster public
8 perception that we would argue is not helpful for
9 the long term good of the Legislature.
10

11 There are some, obviously, objective
12 indications that look to outside observers as if
13 this is already the case, that a tacit bi-
14 partisan agreement has been in place for some
15 time. As you know, the same citizens of New York
16 elect an overwhelming Republican majority to the
17 Senate, and an overwhelming Democratic majority
18 to the Assembly, and has done so for
19 approximately three decades. There's been no
20 other state with divided Houses of the
21 Legislature for so long. New York is unique in
22 that regard, and we would argue, not helpfully
23 so.

24 There are several indications, as I
25 mentioned, that this is a particular problem in

1 some cases, in bazaar shapes of districts. We do
2 want to emphasize, the bazaar shapes, in and of
3 themselves, aren't truly the problem that we
4 think the Assembly should be focused on. They
5 often result from other rationales, and may be
6 entirely sensible in the context of an entire
7 redistricting plan. That said, they could also
8 be indications of particular self-interest. You
9 heard from Mr. Jeffries earlier this morning,
10 that certainly one particular story that's been
11 replicated over time is something that we would
12 urge the Assembly to guard against.

14 Another note on electoral outcomes, which
15 make it appear to outside observers as if self-
16 interest may be controlling the current process.

17 In the last decade as many State Legislators
18 have died in office as have been defeated at the
19 polls in November. When primaries are added to
20 the mix, in the last ten years out of two hundred
21 three hundred and thirty-two possible elections,
22 only twenty-two incumbent legislators have been
23 replaced by the will of the voter, either in
24 primaries or in the general elections.

25 Fewer than six percent of the legislative

1 races from nineteen ninety-four to two thousand
2 and two were decided by ten points or less, which
3 is a fairly generous measure of some degree of
4 competition. The average margin of victory in
5 the same period was more than forty-five percent.
6

7 In and of themselves, these are not
8 necessarily troubling, as other folks here have
9 testified. There are many, many, many
10 constituents who truly love their legislators and
11 want to return them to office as many times as
12 they possibly can. There are also other limits
13 on the system that tend to protect incumbents,
14 not least, of which is name recognition, campaign
15 finance, and ballot access rules. Redistricting
16 is certainly not solely to blame for some
17 depression in the amount of natural competition
18 that would exist, but, when the system is
19 designed such that legislators have the
20 opportunity to influence their own districts,
21 these sorts of outcomes lead people to the
22 conclusion that there are self-interests driving
23 the results. We would argue that that is,
24 itself, a very detrimental thing.

25 The same is true with the variation in

1 district size. As you've heard before, New York
2 districts are very wieldy. In this latest round,
3 New York districts won the thresholds of the
4 presumptive unconstitutional ten percent district
5 variation. If, as others have mentioned, you
6 count individuals who are incarcerated, where
7 they actually live in prison, and not at their
8 former residence or in another place where they
9 have ties to a local community. It's very likely
10 that, at least in the Senate, New York is over
11 the permissional constitutional threshold.
12 You'll hear much more from Peter Wagner in a
13 moment, but just as one particular example, if
14 even thirteen percent of the Watertown hub prison
15 facilities, five thousand two hundred and ninety-
16 one inmates, if even thirteen percent of them
17 previously resided outside of that state senate
18 district where the hub is located, the district
19 would deviate five point one seven percent from
20 the senate district ideal, and that would be
21 enough to push the entire senate district plan,
22 as it currently exists, over the ten percent
23 presumptive unconstitutional threshold.
24

25 The point here being, that an extremely

1 small number of inmates who are counted where
2 they are currently incarcerated, and not at their
3 former residence, exacerbates a wide disparity
4 that currently exists in district populations,
5 and in a way that may very well threaten
6 constitutional values if not constitutionally,
7 the plan itself.
8

9 So this is a short, hopefully, assessment
10 of some of the problems. It's why we commend you
11 for working to implement reform now and over the
12 course of the next few sessions. What to do
13 about the solutions? We believe that it is both
14 possible to fix the who and the how. We believe,
15 as others have said, that meaningful independence
16 is one value that you are to be commended for
17 taking into account. In addition to meaningful
18 independence we would urge that the Assembly
19 adopt a plan with meaningful diversity, with
20 meaningful guideline criteria for constraining
21 the choices of those who perform redistricting,
22 and with meaningful enumeration of individuals
23 and where they are counted. As mentioned, you'll
24 hear from Peter Wagner in a moment with much more
25 detail on the particular issue of how to count

1 individuals who are incarcerated.

2
3 If I can go very briefly through each of
4 those four values that we would urge the Assembly
5 to adopt and turn independence, diversity,
6 meaningful guidelines and enumeration.

7 The first point is that meaningful
8 independence allows the Legislature to counter
9 this perception of self-healing and restores the
10 faith of the population, that the districts are
11 not being drawn by the representatives in order
12 to chose their constituents, but the other way
13 around. The body that draws the districts should
14 be independent, we feel. The staff that serves
15 the body that draws the districts should also be
16 independent. The procedure for selecting
17 nominees to any redistricting body should involve
18 some degree of meaningful independence for
19 individual legislators, as should, obviously, the
20 procedure for selecting the body itself.

21 Others have mentioned two particular
22 means by which meetings may be held, or plans may
23 be drawn, in order to further facilitate this
24 independence.

25 You've heard the Arizona Commission this

1 morning, about some of the procedures that they
2 have adopted in order to insure their own
3 independence from particular legislative
4 proposals.
5

6 It is important in considering all of
7 this, that New York not adopt wholesale, a
8 particular plan or a particular proposal from
9 other jurisdictions. It is very clear that New
10 York is it's own state with its own concerns and
11 its own preferred remedies. We do believe there
12 is much to learn from these other states that
13 have adopted some means of independent decision
14 making on redistricting, and we commend the
15 Assembly for drawing those lessons out.

16 I do want to emphasize that independence
17 does not mean taking the politics out of the
18 process. This is not about merely mechanically
19 drawing mathematical lines in order to divvy up
20 the state. There will inevitably be politics in
21 a redistricting process no matter how independent
22 the body that actually draws the districts is.
23 Drawing district lines is a matter of trade-offs,
24 and many competing sometimes, and sometimes-
25 complementary objectives have to be reconciled.

1 The point of independence, however, is to
2 take the most tantalizing elements of self-
3 interest for individual legislators out of the
4 process. It's to remove the individual
5 gerrymandering that squashes competition
6 unnaturally that decreases effective challenge
7 for individuals. That's the importance of an
8 independent process, and it's something that I
9 think we see in many of the proposals before the
10 Committee, including Mr. Gianaris' bill.

12 Meaningful diversity is also something
13 that is critical to ensure. As many have noted,
14 there is a very rich multicultural mix in New
15 York, it's an extremely diverse population and it's
16 critical to have members of communities that will
17 be represented by districts actually on the
18 bodies that are drawing the districts themselves.

19 In order to further that end, it is important to
20 have a body of substantial size, to ensure that
21 the diversity can be accommodated. It's
22 important to have meaningful diversity, as Ms.
23 Garrett testified, in both the pool of nominees
24 and on the body itself. It's important to have
25 some fair process of selecting the body from

1 among the nominees, because they will inevitably
2 be communities who cannot be perfectly
3 represented on whatever commission is
4 established. So, it's really important that the
5 process of moving from nominee to body be
6 perceived, by all, as fair.

7
8 Most of all ensuring an independent body
9 and a diverse body is critical, because there
10 will always be some play in the criteria that are
11 chosen for developing a particular redistricting
12 plan. It is, as the experience of those in other
13 states have found, is virtually impossible to
14 arrive at criteria that are sufficiently exact to
15 remove any discretion whatsoever, without also
16 running afoul of the very important
17 constitutional and statutory limits, nor is it
18 necessarily desirable to remove all of that
19 discretion.

20 As I mentioned, it is not necessarily a
21 good thing to take the politics out of the
22 redistricting process, just to remove the
23 tantalizing self-interest involved.

24 For that reason, it is also important to
25 get the criteria right, my third category of

1 critical interests. Meaningful criteria must
2 start with the constitutional requirement of
3 equal population, and we do want to emphasize
4 that the Supreme Court has taught, in Cox v.
5 Larios, among others, that deviations, even below
6 the ten percent threshold, must still be
7 justified. There has to be an acceptable reason
8 for denying individuals an equal vote, and there
9 is no constitutional minimum for requiring some
10 justification for districts of unequal
11 population.
12

13 The Voting Rights Act, we also believe,
14 should be explicitly identified as one of the two
15 supreme criteria for any redistricting, but need
16 not stop there. We would urge that any
17 redistricting proposal include, as an explicit
18 criterion, fair and effective representation,
19 even beyond the floor set by the Voting Rights
20 Act. The point is that minorities be fairly
21 represented in districts, and that may or may not
22 be embraced by current or future interpretations
23 of the Voting Rights Act as given by the courts.

24 One point about competition and then I
25 will move swiftly on to the conclusion of the

1 testimony.

2
3 We've heard a lot about competition
4 today. I do want to emphasize the difference
5 between fostering competition and preventing
6 unnatural lack of competition. That is, it is
7 possible to design a system that is not intent on
8 delivering perfectly competitive districts that
9 nevertheless, avoids the temptation to squash
10 competition where it may naturally arise. I
11 would urge the Assembly, particularly the members
12 of this committee, to think more carefully about
13 the different between the two. It is often the
14 case that those who are urging competition on the
15 committee do not actually mean that every
16 district optionally should be fifty-fifty, but
17 rather, and we see this in some of the calls for
18 independence, including some of our own, that the
19 structure avoid the temptation to remove
20 competition before the voters have the change to
21 express their own preferences.

22 Finally, meaningful enumeration. I will
23 close only in saying that those who are
24 incarcerated actually have communities to which
25 they belong, and those are rarely in the

1 districts to which they are removed when they are
2 put in prison. We would urge the committee to
3 reaffirm the principle established in the New
4 York Constitution, among others, that individuals
5 reside where they have ties, and that that
6 residence is not altered when they are removed to
7 prison elsewhere in the state.
8

9 You have several bills in front of you in
10 the Legislature in general, and in particular,
11 you have several bills in this committee in front
12 of you, all of which attempt to further these
13 ends to various degrees. We do believe that Mr.
14 Gianaris' bill is a very commendable start to the
15 process and the best workable and meaningful
16 platform for reform, and we are very encouraged
17 that you are considering it now with enough time
18 to make any necessary changes before the cycle
19 really kicks in.

20 We are more than happy to answer any
21 questions that you may have. We commend the rest
22 of our testimony to you. We certainly don't mean
23 to burden you with it at this point, and also if
24 you have questions going forward about how we may
25 be of assistance, the Brenner Center stands ready

and willing to help the committee at this effort.

Thank you very much.

ASSEMBLYWOAMN DESTITO: Thank you Mr. Levitt. We appreciate your coming here today and we do look forward to working with you in the future. Mr. Benjamin has a question.

ASSEMBLYMAN BENJAMIN: Just one. I've sat here for the last two hours or so and a lot of thought has come to mind about reform and how we should count districts and variance and the like. Should each district have equal numbers of men and women, equal numbers of children, equal number of aliens, undocumented people? When you start cutting it that way, you're looking at districts that may have one hundred twenty-one thousand people, as opposed to one hundred thirty-three thousand, who are actually adults, are often even more widely eschewed. Some of our Latino district populations tend to be younger, so you have fewer voting age people than you have in a neighboring district which may be African American or Caucasian, where you have large numbers of older people over eighteen, or of voting age. How do

1 we then square those sorts of things with
2 districts? Should that be a concern?

3
4 MR. LEVITT: It should absolutely be
5 a concern. The Brennen Center doesn't yet have a
6 formal position on exactly what the numerator
7 should be in this regard. I would say that while
8 it is very important to ensure quality of those
9 who vote, and certainly those are your primary
10 constituents, they're not your only constituents,
11 and members of your districts, whether they are
12 citizens, whether they are non-citizens, whether
13 they are of voting age or not, still are subject
14 to the laws that you pass and the rules that you
15 lay down, and so in order to give an equal voice
16 to the members of the population that you're
17 responsible for, we think any division of
18 population has to reflect, if not in its ultimate
19 application, at least has to reflect the varying
20 population sizes in each district, whether or not
21 they are of voting age and actually turn out to
22 the polls.

23 ASSEMBLYWOMAN DETITO: Mr. Espaillat:

24 ASSEMBLYMAN ESPAILLAT: Following
25 what my colleague said, has the Center taken a

1 look at voter turnout with regards to districts
2 that have a high number of residents that are not
3 voters? Of course, the disparity across the
4 state where you have districts with similar
5 numbers of population, but the turnout,
6 obviously, very different, in some cases because
7 you have a very young population, or you have
8 large numbers of illegal residents who cannot
9 vote. Have you taken a look at that disparity?
10

11 MR. WILLIAMS: We have to some
12 degree. One of the things that the Voting Rights
13 Act does make sure of is when you're trying to
14 decide who can elect the candidate of choice,
15 that you actually take into account who it is
16 that is able to vote. If you have a large number
17 of citizens who aren't eligible, then you have to
18 make different sorts of calculations. You may
19 have to have eighty percent minority district
20 because so many of those people aren't eligible,
21 so that's something we have to take a look at,
22 but it typically only applies to Voting Rights
23 Act jurisdictions because in other places either
24 that's not a big issue, or its not a calculation
25 that's necessary.

MR. LEVITT: One other follow-up, if I may, just on that very point is that it is important to look at the baseline for turnout numbers, particularly when they are recorded and particularly as you gauge your own performance in establishing various election reforms to see how they function. As New York's registration rolls are actually cleaned up over the next couple of years, it would become possible to get a more accurate guideline for who is actually registered, how many people are in each district, and as new federal and state reforms come into effect, it will be very important to make sure that apples are being compared to apples and oranges to oranges. The turnout numbers may vary, but that may well be because the baseline off of which the voters are turning out may vary over time, and that's important to keep in mind when comparing turnout from year to year.

ASSEMBLYMAN ESPAILLAT: With regards to competitiveness, the turnout of the voters is not a clear indicator of the activity of that district, as so much the percentage of voters that are coming out. In some districts you may

1 have a low number of voters. That may not mean
2 that they are not coming out in the higher
3 percentage with other districts that have a
4 higher number of people registered to vote.
5 That's a very important factor, and when you look
6 at that in connection to the aspect of
7 competitiveness that we're trying to create with
8 redistricting, I think it's an important factor
9 to take into consideration.
10

11 ASSEMBLYWOMAN DESTITO: Thank you
12 very much; we look forward to working with you
13 and talking to you.

14 Next, we'll call on Steven Carbo, Senior
15 Program Director of the Democracy Program Demos.

16 MR. CARBO: Good afternoon. I want
17 to thank the Committee and its Task Force for
18 this opportunity to share our views on
19 independent redistricting commission and on the
20 proposal offered by Assemblyman Gianaris. We're
21 a national non-profit public policy organization.
22 One of the areas, as you said, that we've worked
23 closely on is democracy reform, and in that
24 regard we have been working closely with public
25 policy experts, academicians, voting rights

advocates, government reform groups and community leaders to flesh out and craft redistricting reform proposals that would serve the highest public interest.

Most recently we've coauthored a report entitled, Redrawing Lines: A Public Interest Analysis of California's Two Thousand and Six Redistricting Reform Proposals, with the Center for Governmental Studies in Los Angeles. We've helped advise West Coast advocates on redistricting commission legislation adopted by the California Senate last summer and are in the midst of researching a number of other questions about the actual experience with the twelve states redistricting commission, with the special focus on issues like fair representation, minority representation and public participation in the process.

Certainly, as our view has been expressed by others, in the approach towards apportionment reform, that redistricting reform should be guided by clear public interest and public interest approach, including principles of fairness, transparency, political equality,

1 effective public participation and
2 accountability.

3
4 I'd like to share some, certainly not
5 all, of the reflections that are expressed in the
6 much longer testimony that we have submitted
7 today, in reference to the proposal offered by
8 Assembly member Gianaris. In several important
9 regards, I think the legislation does clearly
10 advance public interest.

11 New York's racial and ethnic minorities,
12 as you know, have been historically
13 underrepresented in Albany, and the opportunity
14 to elect candidates of choice and achieve fair
15 representation in government is a critical
16 component of the full participation in our
17 democracy. Drawing district boundaries that
18 facilitate racial and ethnic minorities to elect
19 candidates of their choice and achieve political
20 equality are of paramount concern. As we review
21 the legislation, it can advance political
22 equality and minority representations in several
23 regards.

24 Most significantly, it explicitly
25 mandates that the Apportionment Commission draw

1 up plans in a manner that fair and effective
2 representation of racial and language minorities.
3 Safeguarding minority interests during the
4 Commission's decision-making process requires a
5 reasonable level of diversity within the
6 Commission itself, as others have spoken to, and
7 we take note to the important provisions that
8 Assemblyman Gianaris and his colleagues have
9 included for diverse nomination pool and
10 diversity on the Commission itself.
11

12 At the same time, I think that serving
13 the public interest will require more. On the
14 issue of political equality and minority
15 representation, I would offer at least three ways
16 that the legislation might be improved.

17 First of all, we strongly recommend that
18 the one percent population deviation should be
19 abandoned. While Congressional Districts must be
20 as nearly equal to the ideal population as
21 practicable, constitutional prescient establishes
22 that a maximum deviation of plus or minus five
23 percentage points in state legislature
24 redistricting plans, is presumptively
25 constitutional. Adoption of a stricter deviation

1 benchmark can unreasonably hamstring the
2 Apportionment Commission in its drawing of plans
3 that ensures a fair and effectiveness
4 representation of racial and language minorities,
5 as directed elsewhere in the legislation. It may
6 also unnecessarily limit flexibility in the
7 balancing of other redistricting goals, such as
8 preserving geographic or political "Communities
9 of Interest". Therefore, we recommend that the
10 one percent benchmark be abandoned.
11

12 Secondly, we would recommend that the
13 maintenance of "Communities of Interest", as an
14 apportionment goal, be elevated. The
15 preservation of neighborhoods and communities
16 with distinct racial, ethnic, economic, historic
17 and other interests within a single district, is
18 integral to achieving fair representation. It is
19 also a fundamental element in closing the
20 representation gap among New York's racial,
21 ethnic and language minorities, where members of
22 those minority groups are about thirteen percent
23 lower than their percentage of the population in
24 the state.

25 As drafted, the Gianaris bill priorities

compactness, contiguity, preservation of county, town and city boundaries, nesting and political partying/incumbency blindness above the maintenance of "Communities of Interest". The practical result of this scheme is that any attempt to preserve neighborhoods and communities with established ties of common interest may very well fall away, as the Apportionment Commission goes about the seemingly complex, and politically charged task of drawing district lines.

The bill should, instead, designate the preservation of "Communities of Interest" as its top priority and development of apportionment and not subordinate it to other concerns.

Third, we will recommend that the protection of minority voting strength be adopted as a state public policy priority. The legislation describes groups for which fair and effective representation must be ensured as those covered by the Voting Rights Act. While the Voting Rights Act affords protection to groups who have experience intentional disfranchisement, vote dilution and political under-representation, that federal designation and protection can be

1 undermined in any future change in federal
2 policy, or by hostel court decision.

3
4 Future risks to fair and effective
5 representation of New York's racial, ethnic and
6 language minorities could be averted, in part, if
7 the state promulgates a state policy against the
8 concentration or dispersion of minority
9 populations in ways that adversely affects their
10 voting strength. A state policy, against a
11 dilution of minority voting strength, would stand
12 apart from and independent of federal standards
13 and protections.

14 We offer in our testimony, a number of
15 comments on other various apportionment criteria.

16 I will say, with regard to competition, that
17 that goal should be rest among and should be
18 balanced against other core public interest
19 goals, like political equality and fair
20 representation. Competitiveness should give way
21 to the respect for neighborhoods and "Communities
22 of Interest", particularly in those areas where
23 party representation fractures along racial and
24 ethnic lines.

25 Further, the primary safeguards against

any undue emphasis on incumbent protection and partisan advantage should be those established by the procedures for appointing the commission itself and enacting its plan into laws.

I will skip forward and offer one other reflection on the legislation offered by Assemblyman Gianaris, and that is on the issue of partisan fairness. I think that the overtures to partisan fairness expressed in the provisions on commission membership, are in danger of being effectively nullified in at least two other regards.

First, I think it's very dangerous and troubling that the Commission should be serving at the pleasure of the appointing legislative leaders, as is laid out in the legislation.

Secondly, partisan bias and legislative/gubernatorial control over apportionment process is also hard-wired into the bill, and in a way that threatens to undermine the opportunities for a partisan even-handedness.

The bill allows for three separate opportunities for the Senate, the Assembly and the Governor to object and block the implementation for draft

1 plans. We would suggest that instead, the
2 Commission's apportionment plans be adopted in
3 such a manner that prevents the Legislator from
4 effectively imposing its own district plans, as a
5 previous witness has spoken to.
6

7 I would also add that the
8 disqualification provisions and the attempts to
9 prevent folks with an inherent conflict of
10 interest from serving on the commission itself is
11 noteworthy and important. It's also possible to
12 go further. Alaska, Arizona, Hawaii, Idaho,
13 Missouri, Montana and Washington, those are
14 states with commissions, applied bans on future
15 candidacy for public or legislative office for
16 upwards of five years. Arizona's constitutional
17 provision extends to registration as paid
18 lobbyists for three years after service, as a
19 redistricting panel commissioner. I think these
20 are important provisions to help prevent
21 individuals serving on the commission with an eye
22 towards their future goals, aspirations and
23 activities.

24 I will close by endorsing, as I'm happy
25 to hear have been roundly endorsing, the need to

1 take a look at the way the adoption of the census
2 numbers are being used and the prisoner counts
3 affecting fair representation of the constituents
4 in communities of this state. I will close with
5 that.

6
7 ASSEMBLYWOMAN DESTITO: Thank you. I
8 don't see any questions. We thank you again and
9 we look forward to further dialog. Thank you.
10 Next we'll call on Barbara Zucker, Vice President
11 for Public Policy, Women's City Club of New York,
12 Incorporated. You've hung in there with us.

13 MS. ZUCKER: Thank you. You do this
14 a lot more often than I do.

15 My name is Barbara Zucker, and the
16 Women's City Club is a nonprofit, nonpartisan
17 organization that is dedicated to shaking public
18 policy to advocacy and education. We were formed
19 in nineteen fifteen by a group of suffragists,
20 and ever since then we have been very interested
21 in the whole issue of voting. Therefore, we
22 thank you so much for holding this hearing.

23 We're really concerned about the erosion
24 of citizen participation in government and the
25 very low turnout for elections. We feel that one

1 reason for this is that people feel they have no
2 influence on the election, and that's partly
3 because the election districts are often drawn to
4 protect the incumbent and the incumbent's
5 political party.

6
7 Our re-election rate to the Assembly and
8 the State Senate are among the highest in the
9 country. Also, we feel that the discrepancy in
10 the size of population of different districts
11 should be altered and they should be made more
12 even.

13 We would very much like to see an
14 independent commission. When an election task
15 force is made up of legislators, which I think is
16 the current system in New York, or the
17 reapportionment commission is made of legislative
18 appointees, its only natural for them to consider
19 their own special interests, the reelection
20 prospects for themselves, or whoever appointed
21 them. I think we need commissioner who would
22 serve the public without conflicting pressure
23 from elected officials. So, we would like to see
24 a commission as far removed from the legislature
25 as possible. We think it needs to have efficient

resources to hire a professional staff with the technical expertise to draw district lines fairly and in compliance with relative laws.

I don't recall if it was Arizona or Iowa, but I read that one of them had a budget of six million dollars and New York, in two thousand and two, spent a bit over two million. We probably have many more people and maybe, to a certain extent, what you pay for is what you get.

We think the commission should have the sole power to hire and fire staff and, of course, we're very much in favor of public hearings throughout the state.

As to principles of redistricting, of course it's most important that everything is consistent with federal and state laws under the federal Voter Rights Act. Everybody has stated all the wonderful goals, and they're absolutely true, but the difficulty is how to balance them, the content and compact and contiguous. The outlines of New York's current Elections Districts is so convoluted that they're really a joke. Citizens Union had a meeting where they actually gave names to some of these weird shaped

1 districts. If it weren't serious it would be
2 funny.

3
4 The population sizes vary a lot. Some of
5 them are as much as ten percent different from
6 one district to another, and we think it could be
7 a good deal smaller, perhaps one percent.

8 We looked at the Assembly bills. The two
9 bills, six twenty-four and two zero fifty-six,
10 which calls for a Constitutional Amendment, we
11 didn't spend a good deal of time on simply
12 because the Women's City Club really does not
13 favor a state constitution for issues that we
14 think can be dealt with through legislation. It
15 just seems more efficient, it could happen
16 faster, and I think there's a bit of a fear when
17 you open up Pandora's box.

18 We did look at the Gianaris bill and its
19 certainly a great improvement over what we have
20 now. I'm very glad to see that restrictions that
21 the various committees can't be people currently
22 holding office, or have held office within two
23 years, and can't be lobbyists. However, we
24 really think it could go further towards
25 independence. Most members of the Apportionment

1 Nominations Committee, eight out of eleven would
2 be chosen by elected officials, and that didn't
3 sound too independent to me.
4

5 Almost, the person who spoke just before
6 me, commented on the same thing. We were
7 concerned about that phrase that the people
8 should serve with the pleasure of the official
9 who appointed them. That doesn't sound like
10 independence to me.

11 We'd like a redistricting method that's
12 more removed from the political process. We've
13 read about Arizona and Iowa and that sounds like
14 good models to get some ideas from. Also, the
15 year's almost over, so we're looking to the
16 Legislature in the coming year to propose
17 legislation that will better serve the public
18 interest. It's very hard to balance all the
19 different needs, but we hope we come up with
20 something better.

21 We want to thank you for holding this
22 series of appearances and giving us an
23 opportunity to speak.

24 ASSEMBLYWOMAN DESTITO: Thank you
25 very much. We will be having subsequent hearings

1 and we probably will be doing it and other bills,
2 or bills that we build upon with what we hear at
3 these hearings.
4

5 Next we'll call on Peter Wagner, the
6 Executive Director of Prison Policy Initiative.

7 MR. WAGNER: Good afternoon. Thank
8 you very much for having me here, giving me the
9 opportunity to testify today. My name is Peter
10 Wagner and I am an attorney and Executive
11 Director of the Prison Policy Initiative. For
12 the last five years I have been conducting legal
13 and demographic research on how the census
14 bureau's method of counting people in prison
15 negatively impacts the political redistricting
16 process.

17 The Citizens Union asked me to appear
18 today because the issue of prisoner counting has
19 been raised at your two previous public hearings.

20 I'd like to address, quickly, some of the
21 relevant requirements of the Fourteenth
22 Amendment, and of the New York State
23 Constitution, and then suggest how New York State
24 can fix the problem created by the census
25 bureau's outdated method of counting the

1 population.

2
3 Counting prisoners for redistricting
4 purposes, as residents of the prison town, have
5 profound implications for minority voting
6 strength. I brought with me a map that shows in
7 New York State, there are ten counties where at
8 least half of the black adult population in the
9 state are actually incarcerated state prisoners.

10 So, what this map demonstrates is that the data
11 that New York State relies on to draw its
12 legislative districts is not an accurate
13 reflection of the state.

14 Since nineteen sixty-three, in Reynolds
15 v. Sims, the Supreme Court has required that
16 state legislative districts to be drawn on an
17 equal population basis. The court remarked that,
18 "legislators represent people, not trees or
19 acres. Legislators are elected by voters, not
20 farms or cities or economic interests". The
21 principle is that the weight of a citizen's vote
22 cannot be made to depend on where he lives. Yet,
23 by using census counts of prisoners to draw
24 legislative districts violates this principle by
25 increasing the weight of a citizen's vote if a

1 large prison is nearby.

2
3 Crediting prison communities with large
4 external population of prisoners, who are local
5 residents in no sense other than in the census,
6 turns the "one person, one vote" principal on its
7 head. In given the racial dynamic in New York,
8 where tens of thousand of disenfranchised Blacks
9 and Latinos from New York City are credited to
10 white upstate legislative districts, the Voting
11 Rights Act may also be violated directly. In
12 fact, the Court of Appeals for the Second Circuit
13 in May, in Hayden vs. Pataki, explicitly signaled
14 that it was interested in hearing a case that
15 directly addressed whether counting prisoners in
16 this way was, in itself, a violation of the
17 Voting Rights Act. This was actually shocking,
18 even to me, because with the National Voting
19 Rights Institute we submitted a brief in a later
20 case to the court, and we said that New York
21 State's reliance on census data was one of the
22 factors that the court should look at when
23 determining whether New York State failure to
24 some disfranchisement violated the Voting Rights
25 Act. While the court decided failing

1 disenfranchisement was not covered by the Voting
2 Rights Act, it went beyond our argument and
3 expressed some concern that prisoner counting, in
4 itself, for redistricting violates the Voting
5 Rights Act.
6

7 Critically, of those states that are
8 required to redraw state legislative districts
9 each decade to assure compliance with the federal
10 constitution's "one person, one vote"
11 requirement, states are not required to use
12 federal census data when they are doing so. So,
13 while federal law gives New York State the option
14 of not using federal census data to draw its
15 districts, the State Constitution requires the
16 state to seek another source of data.

17 The New York State defines residence in a
18 way that precludes using census counts of
19 prisoners, "for purposes of voting, no person
20 shall be deemed to have gained or lost a
21 residence by reason of his presence or absence
22 while confined in any public prison". The New
23 York State Constitution requires that the state
24 use the census data for redistricting only
25 "insofar as such census and the tabulation

1 thereof, purport to give the information
2
3 necessary". Therefore, the data produced by the
4 census bureau is not the information necessary
5 for New York's redistricting.

6 So, unlike many other states, the framers
7 of the New York State Constitution foresaw a time
8 when the federal census would not meet the
9 state's needs and they left open the possibility
10 of using other sources of data.

11 I want to then address what I see is
12 three ways that the State of New York could
13 eliminate or greatly reduce the vote dilution
14 that's caused by the Census Bureau's method of
15 counting people in prison.

16 The best place to change where prisoners
17 are counted in the census is at the Census
18 Bureau, but active intervention by New York State
19 is necessary. Given the rapid approach of the
20 next census, and the stubbornness of the Census
21 Bureau bureaucracy, a major change in where the
22 census count incarcerated people is unlike for
23 twenty ten, but the prospect for change in the
24 next census in two thousand and twenty are much
25 better, if action is taken soon. Last month, the

1 National Research Council of the National
2 Academies released a report that was commissioned
3 by the Census Bureau. In that report they called
4 for a major test to take place during the twenty
5 ten census to study alternative ways of counting
6 people in prison in future censuses.
7

8 If New York State wants to use Census
9 Bureau data for redistricting, without violating
10 its State Constitution, the Legislature should
11 formally ask the Census Bureau to change how it
12 counts prisoners. The Census Bureau considers
13 redistricting to be the second most important use
14 of its data, so the opinion of New York State
15 would carry significant weight with the Bureau.

16 A second option that would lessen the
17 harm from miscounting prisoners in the twenty ten
18 redistricting cycle, would be for New York State
19 to take the prison population out of the census
20 data, prior to redistricting. While ignoring any
21 part of the population is not ideal, ignoring the
22 incarcerated population is a better solution than
23 crediting tens of thousands of disenfranchised
24 minority men to entirely different "Communities
25 of Interest". Removing the prison population is

not a new idea, in fact, at least twelve upstate counties, including Franklin and Green counties, already take prisoners out of the data used to draw their local county legislative districts.

New York State would find it even easier to remove prison populations from redistricting data if the populations were specially marked in the redistricting data. Currently, correctional facility counts are available only in Summary File One, which is published separately in three to five months after the Census Bureau publishes the PL94-171 redistricting data. New York State should, therefore, immediately notify the Census Bureau's redistricting data program that the state would like to see correctional facility populations identified within the redistricting data.

Third, New York could adopt the bill advanced by Senator Schneiderman, and Assemblyman Espaillat, which would collect the home addresses of people in prison, and adjust the census data prior to redistricting. The bill is loosely modeled after how Kansas adjusts census counts of soldiers and students to comply with how the

1 Kansas State Constitution defines residents. The
2 Schneiderman/Espaillet bill requires correctional
3 facilities to submit home address information for
4 each incarcerated person to the Board of
5 Elections, which will then modify the PL94-171
6 redistricting date to remove incarcerated people
7 from the census block where the prison is
8 located, and add them to the census block
9 containing their last address prior to
10 incarceration. This resulting data set would
11 reflect where all people in New York, including
12 people in prison, legally reside, and would be
13 required for use when drawing congressional,
14 Senate, Assembly, and County legislative
15 districts.
16

17 In conclusion, the Census Bureau's
18 outdated method of assigning residence to people
19 in prison plays a large problem for democracy in
20 New York. The problem was left uncorrected
21 during the last redistricting cycle, because the
22 importance of the issue was discovered only
23 shortly before the two thousand census began.
24 Today, we have the benefit of advanced notice.
25 If New York State begins lobbying the Census

1 Bureau in planning to adjust federal census data
2 today, the state will be able to draw districts
3 that give residents near prisons, and residents
4 far from prisons, the same access to government.
5

6 I thank you for the opportunity to
7 participate in the reexamination of the
8 redistricting process in New York, and I look
9 forward to any questions that you may have.

10 ASSEMBLYWOMAN DESTITO: Mr.
11 Espaillat?

12 ASSEMBLYMAN ESPAILLAT: Thank you for
13 your testimony. Have you figured out exactly, if
14 this were to happen, how many actual districts it
15 would impact, the shift of districts it would
16 impact across the state?

17 MR. WAGNER: It's impossible to tell
18 for sure, giving the flexibility that the
19 Legislature has in drawing legislative districts,
20 so, we see that there's almost forty thousand
21 people from New York City were credited upstate.
22 That's by itself a third of an Assembly seat.
23 Would it cause a cascade effect that would affect
24 some district that borders New York City and
25 Westchester, or that border Albany, or Buffalo

1 and the surrounding areas? It may affect how
2 some of those outlying districts are impacted.

3
4 Where I think the largest impact you
5 would see is, I think it would change some of how
6 policy is developed in the upstate areas. For
7 example, in Senator Volker's district. If
8 Senator Volker's district did not include nine
9 thousand prisoners, his district would be a
10 little bit geographically larger. I believe the
11 Senator directly to his south, there is one small
12 prison in that district, but a number of large
13 colleges. You would start to see some other -
14 let me rephrase that.

15 What's happened over the last few decades
16 is that some of the upstate legislators have kind
17 of solidified around prisons as the main
18 industry. What I think you would see, if the
19 districts were based on the actual population, a
20 more diverse set of rural upstate needs
21 represented in the Senate, which I think would
22 then have some larger policy implications for the
23 state.

24 The short answer to your question is that
25 its very difficult to be short, given the other

criteria that are used to draw districts.

ASSEMBLYWOMAN DESTITO: May I ask you Mr. Wagner, where do the states obtain the authority to create a special census? It would have to come from the Census Bureau and how do we collect the addresses, there are people incarcerated today, which will probably be impacted in two thousand ten also, so where do states get that authority to do that?

MR. WAGNER: The authority to deviate from the census?

ASSEMBLYWOMAN DESTITO: Yes.

MR. WAGNER: It turns out that that's not a right that's given to the - most states use the federal census data because its produced by the federal government and the states don't have to pay for it. The states are not required to use the federal census. There's actually a Supreme Court case, Manham v. something and there's also a Third Circuit case where in Pennsylvania there was some litigation about how prisoners and military people were counted, and the Third Circuit don't take that up with the Census Bureau, take that up with your State

1
2 Legislature. While you are required to use the
3 census to determine how many congressional seats
4 your state gets in Congress, you're not required
5 to use the federal census to divide up your
6 population. Mechanically, New York State, in
7 terms of - did I answer the first part of your
8 question?

9 ASSEMBLYWOMAN DESTITO: Continue, I
10 don't think you've answered it.

11 MR. WAGNER: The legislation that
12 Senator Schneiderman and Assemblyman Espaillat
13 proposed requires the operators of state and
14 local correction facilities to collect this
15 information and submit it to the Board of
16 Elections, and they are supposed to collect this
17 data as of the population that's been in their
18 facilities during the census and ---

19 ASSEMBLYWOMAN DESTITO: Okay then
20 that answers it.

21 MR. WAGNER: It has to occur
22 concurrent with the census.

23 ASSEMBLYWOMAN DESTITO: Mr. Benjamin?

24 ASSEMBLYMAN BENJAMIN: this follows
25 on Ms. Destito's question as well.

1 The census, as we know, is a snapshot of
2 American on any particular day in any particular
3 year. Prisoners who may be incarcerated on that
4 particular day may not be incarcerated on the day
5 on which we begin to create a plan for the
6 legislative districts. I think it would make
7 more sense if we followed the
8 Espaillat/Schneiderman bill, where we required
9 DOC to provide the home addresses of the
10 incarcerated folks, not to the Board of
11 Elections, but to the commission that's doing the
12 redistricting, so they have those numbers.
13 Wouldn't that be much more effective? Then do we
14 use the addresses for prisoners who were
15 incarcerated on the date of the census, or on,
16 let's say, January first of the year in which
17 they are doing the redistricting?

18 MR. WAGNER: I think in order
19 effectively adjust the census you'd have to do
20 everything as of census day, or census month, and
21 I think that - I'm not sure why the Board of
22 Elections was chosen to do the modifying of data,
23 but I think there needs to be one agency that can
24 adjust the data and provide that to the people
25

1 who are going to be doing the redistricting.
2
3 But, I think you have to do everything as of
4 census day or census month.

5 ASSEMBLYWOMAN DESTITO: Mr. Thomas
6 Down, member of the Board of Directors Ridgewood
7 Property Owners and Civic Association.

8 MR. DOWD: Thank you very much for
9 having me here today. My name is Thomas Dowd and
10 I live in Ridgewood, Queens. Ridgewood is a
11 small community of homeowners and Mom and Pop
12 shops with a population of about sixty-two
13 thousand, small for New York City. Ridgewood has
14 always been a working class immigrant community;
15 the population is about fifty percent Hispanic.
16 Poles, White, Americans and other Eastern
17 Europeans make up the rest of the community.

18 Ridgewood's community of interest is that
19 its one of the largest historic districts in the
20 country, with a conservative and independent
21 record based on Queens politics.

22 I am here representing the Ridgewood
23 Property Owners and Civic Association. We
24 support redistricting reform in the form of a
25 law, instead of a constitutional amendment. We

1 would like to see Assembly Bill Sixty-two eighty-
2 seven become New York State law.

3
4 "Drinking the Kool-Aid" is a popular
5 expression that refers to hundreds of men, women
6 and children who committed mass suicide several
7 years ago. They were cult members convinced that
8 the world was attacking them, that death was
9 better than dialog, and that there was no viable
10 choice, and they would follow their leaders above
11 all else. Sounds like politics in America.

12 Today, the Kool-Aid of our democracy is
13 the juice cynicism and hopelessness among the
14 citizens of New York State about the state of our
15 governments in Albany, Brooklyn, blue states and
16 even the whole country. The bucket that holds
17 that cynical Kool-Aid of despair is the
18 gerrymandered political district. From the
19 sweetheart gerrymandering of Queens County to the
20 outright corruption of northern Brooklyn, to the
21 Tom Delay drawn district of Texas, reform is
22 needed. Voter participation is falling to the
23 floor, as they taste the culture wars in a cup
24 full of thirty second spots. Only five percent
25 of New York State's legislative districts are

1 considered competitive. It is not surprising
2 that the Brennan Center for Law has described the
3 New York State Legislature as, "the most
4 dysfunctional legislature in the country".
5

6 Ridgewood has had a unique experience
7 with redistricting several years back that opened
8 our eyes to the national problem of district
9 fixing. Our experience relates to a city council
10 seat, but it is relevant to state wide
11 redistricting for two reasons.

12 First, because of terms limits, state
13 senators want to control city council seats so
14 they periodically can change the name off the
15 door without changing the power relationship to
16 the mentor legislator.

17 Second, the city did everything bill
18 sixty-two eighty-seven wants to do in the state.

19 There was an independent commission. There were
20 multiple public hearings. There were plans
21 submitted by minority lobby groups. There was
22 the appearance of transparency, without the
23 reality of transparency. The impartial leader of
24 the commission ran for mayor. The impartial
25 member journalist was one conspirator's ally and

1 her paper went out of her way to malign the
2 critics of this gerrymander. About fifty people
3 testified against splitting of Ridgewood and only
4 four spoke for the plan. All four who spoke for
5 the plan were supported and, indeed, employees of
6 one of the conspirator senators. Busloads of
7 people came to the hearings to watch
8 disinterested commissioners say nothing and offer
9 no redress.
10

11 After new districts were approved, the
12 commission went out of business, slamming the
13 door for another ten years. The minority members
14 of the community could not get a hearing before
15 the U.S. Justice Department because only
16 Brooklyn, Manhattan and the Bronx are mandated so
17 submit redistricting plans to that agency because
18 only those counties have a proven history of
19 discrimination.

20 What came out of the redistricting
21 hassle? The new district includes a small part
22 of Queens in the large Brooklyn district. A
23 couple of hundred Queens citizens can count the
24 Brooklyn politicians going to jail for selling
25 judgeships and feel comfort that there,

1 representative in the city council is part of
2 that organization. The county line between
3 Brooklyn and Queens counties was not respected.
4 One senator got to jettison Jewish voters at one
5 end of Brooklyn and pick up Hispanic named voters
6 in Ridgewood. One senator was able to disgorge
7 Hispanic voters and retreat to the safety of a
8 white district.
9

10 Sweetheart gerrymandering is alive and
11 well in Queens. Ethnic packing is alive and well
12 in Brooklyn. The redistricting process was not
13 transparent, not independent, not subject to
14 proper review, did not produce a compact district
15 respectful of county lines, diluted the vote of
16 Queens Hispanic Democrats, manipulated voting
17 history and public records of registrations to
18 draw protected district lines, manipulated the
19 role of the U.S. Justice Department, produced
20 safe districts for incumbents and respected long
21 standing political coalitions between the major
22 parties.

23 We support the form of redistricting
24 proposed by sixty-two eighty-seven and Senate
25 bill seventy-eight, fifty-five. We call on all

1 senators representing Ridgewood to sponsor this
2 bill; we call on our Assembly people to turn this
3 bill into law. We invite this body to come to
4 Ridgewood and hold a hearing in Ridgewood.
5 However, we don't want the appearance of
6 independence and transparency without its real
7 substance.
8

9 The six hundred members of the Ridgewood
10 Property Owners and Civic Association would also
11 like to see the bill strengthened to allow
12 confidence I the electoral process come back to
13 the people of the state. We want democracy by
14 voters and not by map drawers. Here are a few
15 suggestions: 1) the law should incorporate the
16 spirit of the first and fourteenth amendment to
17 the Constitution. A permanent judicial process
18 should afford all New York counties the oversight
19 given to the Bronx, Brooklyn and Manhattan. All
20 counties should have that oversight built in.
21 This might be the responsibility of the Attorney
22 General. Plans that violate "one man, one vote"
23 should be rejected as part of the law in any
24 county.

25 The commission should be allowed to

1 correct mistakes made in the census count and
2 develop processes that encourage transparency and
3 real independence of the commission, and the
4 compactness and the competitiveness of the
5 district. Partisan opportunism should be avoided
6 during adjustments to the census.
7

8 Over time, the commission should define
9 "Community of Interest" to the satisfaction of
10 the majority of voters. Independence of the
11 commission should be closely defined so as to
12 build public trust.

13 Crossing county lines and non-contiguous
14 districts should be specifically banned. The use
15 of voting history and ethnic data or incumbent
16 address should be limited. Voting history data
17 should be excluded from the initial mapping
18 process and allowed later to test for compliance
19 with federal laws. Loopholes related to where
20 candidates actually live should be closed.

21 If the maps fail to gain legislative
22 approval, the Court of Appeals should have
23 jurisdiction and build a set of case law around
24 the process.

25 The redistricting body could run initial

public comment periods, much as the federal agencies do, with deadlines for submissions of comments and televised proceedings.

Thank you very much for your attention.

ASSEMBLYWOMAN DESTITO: Thank you. Thank you very much for coming, we appreciate it and we certainly understand your concerns.

Michael Kaplan, District Aide for Assemblyman Gottfried.

ASSEMBLYMAN GOTTFRIED: Good afternoon. Assemblyman Gottfried couldn't be here today, so I'll be reading in his stead.

It is important that the committee and Task Force are holding these hearings today on the redistricting process in New York State. I appreciate this opportunity to submit testimony.

There can be obvious unfairness and abuse in a system in which the State Legislature writes and maps the laws that define district lines. Legislative district lines for a City Council, State Legislature, or Congress can heavily favor a political party or faction, neighborhood or demographic group, or carve up an area to disenfranchise or undermine any group. Lines can

1 be drawn to advance or destroy the prospects of
2 an individual elected official or candidate.

3
4 Democrats are particularly concerned
5 about continued Republican control of the State
6 Senate, which results, in part, from the fact
7 that the majority party in each house of the
8 Legislature draws its house's district lines.
9 Republicans have the reverse concern about the
10 Assembly.

11 I believe that New York's political
12 processes would be improved by creating an
13 independent commission on redistricting and
14 giving it a major role in the redistricting
15 process, similar to the highly regarded Iowa
16 system.

17 However, there is real danger of far
18 greater abuse, manipulation, or inadvertent
19 damage if such a commission is given too powerful
20 a role. New York should chart a reasonable
21 course that will improve the system and reduce
22 unfairness and abuse, without creating new and
23 more serious problems.

24 Each member of any commission will be
25 appointed by somebody. Even a commission whose

1 members are appointed by a variety of different
2 authorities can still be controlled by a
3 coalition of those authorities.
4

5 For example, one proposal would have a
6 nomination commission appointed the Governor, the
7 State Comptroller, the State Attorney General,
8 the Chief Judge of the Court of Appeals, and the
9 majority and minority party leaders of the
10 Assembly and the Senate.

11 If you assume strong Democratic election
12 results this year and continued service by Chief
13 Judge Judith Kay, that commission's appointers
14 would be six Democrats and two Republicans. It's
15 hard to call that "independent."

16 But suppose this had been in effect for
17 the two thousand and two redistricting. The
18 nineteen ninety-eight Attorney General race was
19 so close that paper ballots were still being
20 counted into December. Suppose Dennis Vacco had
21 done slightly better than he did, and got
22 reelected. Suppose Judge Kay had decided to
23 retire and Governor Pataki had appointed the
24 Chief Judge. It is easy to imagine that if we
25 had an independent redistricting commission in

1 two thousand and two, it would have been
2 appointed by five Republicans and three
3 Democrats. This could have produced an
4 independent redistricting of the Assembly, Senate
5 and Congress that would resemble the recent
6 outrageous Texas Republican redistricting.
7

8 That's not a risk I want New York to
9 take.

10 If one party dominates the commission
11 that party can do more than just create districts
12 that give it the possibility of long-term control
13 or increased strength in both houses of the
14 Legislature. That party can also create
15 political chaos for the other party by mixing up
16 parts of individual legislators' districts.

17 A governor could form alliances, within a
18 commission with some factions of his or her
19 party, or the other party, to threaten or damage
20 legislators and thereby exert political or
21 legislative domination. This power would come on
22 top of the fact that New York's governors already
23 have more power than the governor of almost any
24 other state.

25 Those who support giving control of

1 redistricting to any entity outside the
2
3 Legislature should understand that neither house
4 of the Legislature is likely to create a system
5 that has the potential for such devastating long
6 term consequences for either party. But, those
7 who oppose such a system should acknowledge that
8 serious abuses happen under the current system of
9 redistricting. Both groups should work together
10 to create a system that would reduce the
11 potential for abuse and increase the prospects
12 for fair district lines.

13 I believe in an independent commission,
14 one appointed by multiple parties, should play a
15 role in the redistricting process. To help
16 elevate the quality of the appointees, there
17 could be screening committees to compile lists of
18 candidates for appointment, and restrictions or
19 qualifications for appointees.

20 There could be a criteria created by law
21 for district lines, with the possibility of
22 judicial review of the lines that are ultimately
23 adopted. The commission would propose Assembly,
24 Senate and Congress district lines. If the
25 Legislature objects to any part of the proposal,

1 it would have to submit specific objections or
2 changes to the commission, which could then
3 respond. Under the Iowa system, after a process
4 like this, the final lines are determined by the
5 Legislature adopting bills that are subject to
6 signing or vetoing by the Governor. I think this
7 would make sense for New York.
8

9 The commission's proposal would be
10 subject to public scrutiny and would need
11 legislative approval. The Legislature would have
12 to publicly propose its changes to the
13 commission's plan, and would know that its
14 actions would also be subject to public scrutiny,
15 and ultimately, to judicial review. So both the
16 commission and the Legislature would be under
17 pressure to create lines that are fair,
18 reasonable, and meet the legal criteria.

19 A system like this would significantly
20 improve the redistricting process. It would make
21 abuse and unfairness less likely, and raise the
22 political price to be paid by those who would try
23 to engage in abuse and unfairness. Yet it would
24 not create the opportunity for one leader, party,
25 or faction to hijack the process and inflict

nuclear damage on others.

There are many alternative plans that could accomplish these goals. Advocates of good government, including those who hold office and those who don't, should work together to develop and advance a reasonable plan.

The hearings you are holding are an important step forward in this process. Thank you again for the opportunity to submit testimony.

ASSEMBLYWOMAN DESTITO: Thank you very much. This concludes our hearing today. We will have subsequent hearings around the state and we look forward to further input.

Thank you.

C E R T I F I C A T E

I, FRANK GRAY, a Shorthand Reporter and Notary Public in and for the State of New York, do hereby stated:

THAT I attended at the time and place above mentioned and took stenographic record of the proceedings in the above-entitled matter;

THAT the foregoing transcript is a true and accurate transcript of the same and the whole thereof, according to the best of my ability and belief.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 2006.

FRANK GRAY