

Testimony to the NYS Independent Redistricting Commission
Tuesday, February 7, 2023, 4:00 p.m.
Hunter College Auditorium, 695 Park Avenue, New York New York 10065
Submitted by Meryl Brodsky, District Leader, 73rd AD, Part A

Background: There is a redistricting plan afoot that would place East Manhattan from 61st Street, Sutton Place, Turtle Bay and environs under the aegis of a Queens assembly district. This redistricting scheme is not favored by the respective communities and may not meet constitutional muster. According to City and State, “Five big takeaways from the new Assembly draft map,”¹ 12/1/22:

As it stands, Assembly districts don’t span the East River to join Queens and Manhattan. But the new proposed District 36 would bundle into one seat the Upper East Side of Manhattan, Roosevelt Island and the Long Island City and Astoria waterfronts in Queens. It would take from portions of retiring Assembly Members Dan Quart and Cathy Nolan’s districts.

According to a former project director at the Citizens Union, the process can be simplified in the words of New York law school Professor Jeffrey Wice: “[T]he IRC goes on the road to hear from the public at hearings that start in January and go through early March. The IRC can be expected to modify its map and to release another draft before its April 28th deadline to submit a map to the legislature for approval. If the legislature (or Governor) rejects the map, the IRC goes back to produce a second draft map (and this is where the commission failed last winter). A formal legislative second map rejection could let the Assembly draw its own map.”

The redistricting spawned an ongoing lawsuit due to procedural questions. Pursuant to the Voting Rights Act of 1965, US and NYS Constitutions, including 2014 amendments, the various redistricting proposals are subject to a constitutional procedure. Pertinent US cases include *Rucho v. Common Cause* (Gerrymandering does not violate the US Constitution if it does not impinge on minority voting rights or obstruct the one-person, one-vote law).

Accordingly, Petitioners, a group of New York Republican voters, claim that procedure was not adhered to in the first round of map-making. *Nichols et al. v. Hochul*, 2022 NY Slip Op 22312 (NY Supreme Court, 9/29/2022) invalidated the assembly maps on procedural grounds.

Now on appeal, their Petition and accompanying affidavits allege procedural unconstitutionality only, with no allegation of gerrymandering or any other substantive flaw. The brief for Respondents-Respondents Senate Majority Leader and President Pro Tempore of the Senate Andrea Stewart-Cousins and Speaker of the Assembly Carl Heastie (Case No.: 2022-04649 (1st Dep’t, 12/07/2022, NYSCEF Doc. No. 14-page 25)), states:

THE COURT: [I]s your only claim to strike the Assembly map[] and to do the other items based upon the perceived procedural unconstitutionality or are you seeking a claim that there are issues in terms of potential gerrymandering.

MR. WALDEN: Your Honor, to be crystal clear, again, I’m sorry if I wasn’t crystal clear before, the issue here is what everybody here is referring to as procedural unconstitutionality.

¹ <https://www.cityandstateny.com/politics/2022/12/heres-newly-drawn-draft-map-assembly/380347/>

Accordingly, plaintiffs, representing NYS Republicans, are not concerned with substance, e.g. or if the lines were gerrymandered and thus fail to comply with DOJ requirements for minority voting rights, but only if the process should allow the lines to be rejected by the legislature or governor and redrawn, under which circumstances, they would not win.

The Proposal does not satisfy the Criteria: In their own words, the NYS Independent Redistricting Commission “ is required to create a plan for the re-drawing of the State legislative and congressional districts, and must take into account various State and federal constitutional and statutory requirements.² There follows an analysis of whether or not the IRC is complying with its own statutory criteria, as applied to the proposed 73rd and 36th Assembly Districts for which there is currently no Department of Justice (DOJ) approval. Objections to the proposal include:

(i) Whether the new district lines would result in the prohibited denial or abridgment of racial or language minority voting rights.

- (a) A comparison of the population by race shows that a prohibited denial of minority voting rights might result in Queens. Briefly, there would be a sharp increase in the number of white voters in Queens and diminution of minorities including Hispanic, Asian and Other. This result may not comport with DOJ requirements.(See Tables 1 and 2)
- (b) The Manhattan subdivision, comprising Manhattan East from East 61st Street, Sutton Place and Turtle Bay would shift approximately 28-30,000 voters comprising 22 Election Districts (ED) to Queens.
- (c) Relevant community planning district profiles for the 73rd and 36th Assembly districts show the 73rd AD has the highest proportion of senior citizens in the City, perhaps the country, approximately 20%, compared to 12% in Queens.(See Exhibit 1- County and Community District Profiles) Such categorical group would be denied their right to vote as a force majeure and affect state and federal legislation, including Medicare, Medicaid and long-term care. Further, the Queens district containing a large number of expanding families would similarly be denied its right to promulgate legislation that affects children and families, such as pre- and public school funding.

(ii) To the extent practicable, districts containing as nearly as may be an equal number of inhabitants;

- (a) Although all of the 150 assembly districts are required to have equal numbers, the 73rd assembly district subdivision that would be subsumed or eliminated by Queens should be considered as well. There is no way the assembly parts in either Queens or Manhattan could have an equal number of voters.

(iii) Districts must consist of contiguous territory and shall be as compact in form as practicable;

- (a) The proposed district is not contiguous to Manhattan since it is entirely separated by the East River, and difficult for senior citizens, who heavily populate the region, to reach via public transportation. We should not have to swim to Queens for Town Hall meetings nor cross the 59th Street Bridge with canes or walkers.

² See “U.S. Department of Justice Guidance under Section 2 of the Voting Rights Act, 52 U.S.C. 10301, for redistricting and methods of electing government bodies,” September 2021. <https://www.justice.gov/opa/press-release/file/1429486/download>

(b) Manhattan's 73rd subdivision shares boundaries with both the 74th and 76th Manhattan assembly districts but not the Queens' 36th AD. The 73rd is currently both compact and proximate to Midtown's transportation hubs, including East 59th Street and Grand Central. Its compact shape renders it accessible for seniors to reach the best health care, entertainment and shopping. Their local assembly member should be accessible as well.

(iv) Districts cannot be drawn to discourage competition, or for the purpose of favoring or disfavoring incumbents; and

(a) The proposal unfairly disfavors both the incumbent and newly elected assembly members. Neither the incumbent Queens assembly member (AD #36), nor newly elected Manhattan assembly member (AD #73), was elected from this "merged" district. Thus, the redistricting draft is not predicated on an elective change and may not pass muster with the DOJ. However, the 2021 districts approved by the DOJ and implemented for the 2022 assembly election, still make sense. (See Exhibit 1 – Voter Enrollment Totals)

(v) The maintenance of existing districts, pre-existing political subdivisions, including counties, cities, towns and communities of interest.

(a) Whereas Queens further divides each assembly district into two subdivisions (each represented by two district leaders), Manhattan divides most assembly districts into three and sometimes four parts. Thus, based on the population, the Queens 36th AD subdivisions would always outnumber the Manhattan 73rd subdivision by 2 or 3:1. Also, a substantial number of (senior) citizens who comprise the subdivision would have less opportunity to participate in the process and elect candidates of their choice.

(b) The proposal affects land use in our district adversely because an institutional memory of development projects is key to Turtle Bay's quality of life. For example in 2017, when the massive redevelopment of Vanderbilt One was contemplated, the efforts of Turtle Bay to exclude six square residential blocks was crucial to the improvement of the entire vicinity. Divorcing Turtle Bay from the rest of the 73rd AD will impinge on its quality of life.

Conclusion - Since the congressional district lines in the 12th CD have already gone to court and were ordered to be revised by a special master, the same constitutional error could occur again if the IRC does not listen to the public's opposition. Assembly districts are smaller than congressional or state senate district and generally are kept intact in one county. Further, there is no precedent for a Queens assembly district subdivision in Manhattan nor for a Manhattan assembly district subdivision in Queens. The current 73rd Assembly district should not be divided by the East River since I do not intend to swim to town hall meetings in Queens or ask anyone to cross the 59th Street bridge with canes or walkers.

Since the people of the 73rd and 36th Assembly Districts have already spoken and elected representatives for both congress and assembly, such elections should not be undermined. The IRC proposal, if not corrected to keep all of the Manhattan subdivisions in Manhattan, as are both current assembly districts 73 and 76, should be rejected by the NYS legislature.

Table 1

Current Population of the 73rd and 36th Assembly Districts compared to the NYS Independent Redistricting Commission Proposed Lines

Current Lines – Manhattan 73rd Assembly District

| | Total | White | Black | Hispanic | Asian | Other ³ |
|--------------------|---------|---------|-------------------|-------------------|--------|--------------------|
| Total ⁴ | 141,269 | 105,538 | 2,730 | 9,573 | 17,942 | 5,676 |
| % of Total | | 74.57 | 1.93 | 6.78 | 12.70 | 4.02 |
| Total 18+ | 123,794 | 93,418 | 2,514 | 8,110 | 15,751 | 4,001 |
| % of 18+ | | 75.46 | 2.03 | 6.55 | 12.72 | 3.23 |
| | | | Department | of Justice | | |
| Total | 141,269 | 105,348 | 3,305 | 9,573 | 19,989 | 3,054 |
| % of Total | | 74.57 | 2.34 | 6.78 | 14.15 | 2.16 |
| Total 18+ | 123,794 | 93,418 | 2,948 | 8,110 | 16,824 | 2,494 |
| % of 18+ | | 75.46 | 2.38 | 6.55 | 13.59 | 2.02 |

Proposed

| | Total | White | Black | Hispanic | Asian | Other |
|------------|---------|---------|-------|----------|--------|-------|
| Total | 137,535 | 101,965 | 5,378 | 11,688 | 18,504 | |
| % of Total | | 74.1 | 3.9 | 8.5 | 13.5 | |
| Total 18+ | 89,684 | 67,139 | 4,423 | 7,089 | 10,604 | 428 |
| % of 18+ | | 75.0 | 4.9 | 7.9 | 11.8 | .4 |

Current Lines – Queens 36th Assembly District

| | Total | White | Black | Hispanic | Asian | Other |
|------------|---------|--------|-------------------|-------------------|--------|-------|
| Total | 141,276 | 59,196 | 11,248 | 35,313 | 27,451 | 8,608 |
| % of Total | | 41.90 | 7.96 | 25.00 | 19.43 | 5.71 |
| Total 18+ | 122,594 | 53,515 | 9,161 | 29,084 | 24,47 | 6,365 |
| % of 18+ | | 42.65 | 7.47 | 23.72 | 19.96 | 5.19 |
| | | | Department | of Justice | | |
| Total | 141,276 | 59,196 | 12,212 | 35,313 | 29,005 | 5,550 |
| % of Total | | 41.90 | 8.64 | 25.00 | 20.53 | 3.93 |
| Total 18+ | 122,594 | 53,515 | 9,863 | 29,084 | 25,535 | 4,597 |
| % of 18+ | | 43.63 | 8.05 | 23.72 | 20.83 | 3.75 |

Proposed

| | Total | White | Black | Hispanic | Asian | Other |
|------------|---------|--------|--------|----------|--------|-------|
| Total | 137,433 | 71,026 | 12,632 | 23,889 | 29,986 | |
| % of Total | | 51.7 | 9.1 | 17.4 | 21.8 | |
| Total 18+ | 77,790 | 47,417 | 7,068 | 11,854 | 10,937 | 514 |
| % of 18+ | | 61.0 | 9.1 | 15.2 | 14.1 | .6 |

³ Includes the average of categories; AmIn (American Indian), Hwn (Hawaiian), Multi and Other.

⁴ The ideal population per assembly district 2020 is 134,626 persons. The “current” lines represent a 4.94% deviation from the ideal. The “proposed” lines deviate by about 2.09-2.16%. Possibly, this 2% change was made to comport with the provision that states, “[A]ny amendments by the Senate or Assembly to a redistricting plan submitted by the Commission shall not affect more than two percent of the population of any district contained in such plan,” pursuant to Chapter 17 of the Laws of 2012. SOURCE: NYS Task Force on Legislative Reapportionment and Research, LATFOR and NYS Independent Redistricting Commission; <https://latfor.state.ny.us/maps/>; <https://www.nyirc.gov/>

Table 2

**Current Department of Justice (DOJ) Lines for the
73rd Manhattan and 36th Queens Assembly Districts compared to the
Proposed Lines of the Independent Districting Commission (IRC)**

| 73rd AD Manhattan | Total 18+ % | White | Black | Hispanic | Asian | Other |
|---|----------------|-------------|--------------|--------------|--------------|--------------|
| DOJ Current | | 75.46 | 2.38 | 6.55 | 13.59 | 2.16 |
| IRC Proposed | | 75.30 | 4.90 | 7.90 | 11.80 | .40 |
| Change | | -.16 | +2.52 | +1.35 | -1.79 | -1.76 |

Table 2

| 36th AD Queens | Total 18+ % | White | Black | Hispanic | Asian | Other |
|--------------------------------------|----------------|---------------|--------------|--------------|--------------|--------------|
| DOJ Current | | 43.65 | 8.05 | 23.72 | 20.83 | 3.95 |
| IRC Proposed | | 61.00 | 9.10 | 15.20 | 14.10 | .60 |
| Change | | +17.35 | +1.05 | -8.52 | -6.73 | -3.35 |

Table 1 shows the racial composition of Manhattan’s 73rd AD is a majority white, 75.5%, which the IRC decreased by .16%, less than 1%. Similar findings exist for the proportion of Black, +2.5 %, Hispanic +1.4%, Asian -1.8 and Other, -1.8. The overall change for all groups is statistically insignificant at .16%.

Table 2, the racial composition for Queens 36th AD, shows stark contrasts. The IRC creates a white majority of 61%, up 17.4 % from a plurality of 43.65%. The Black percentage is increased by 1.05% to 9.1%. The Hispanic population declines by 8.52% from 23.72% to 15.2% and the Asian population by 6.73%, from 20.83 to 14.1%; also, Other declines by .60% to 3.35%. Further, the data shows that the white percentage varies inversely with the substantial decline of Hispanic, Asian and Other voters. The white increase of 17.4% is approximately the same as the cumulative decline of Hispanic, Asian and Other voters of 18.6 %, from 48.5% to 29.9%.

Discussion: The changes in the 36th AD may not comply with DOJ regulations since the proposed lines would decrease minority voters by approximately 19%, exceeding the 5% or 10% standard error. Further, the proposed lines demonstrate a sharp increase in the number of white voters of 17-18%, creating a majority where none would otherwise exist, thus diluting minority voting strength. This would not be allowable under DOJ Guidelines. See “U.S. Department of Justice Guidance under Section 2 of the Voting Rights Act, 52 U.S.C. 10301, for redistricting and methods of electing government bodies,” September 2021. <https://www.justice.gov/opa/press-release/file/1429486/download>

Exhibit 1

**NYS Voter Enrollment by Assembly District, Party Affiliation and Status
Voters Registered as of November 1, 2022***

| DISTRICT | STATUS | DEM | REP | CON | WOR | OTH | BLANK | TOTAL | |
|-------------------------|----------------|----------|--------|--------|-----|-----|-------|--------|--------|
| <u>QUEENS</u> | | | | | | | | | |
| 36 | District Total | Active | 51,011 | 5,726 | 217 | 255 | 1,522 | 16,133 | 74,864 |
| 36 | District Total | Inactive | 6,118 | 879 | 27 | 19 | 345 | 2,683 | 10,071 |
| 36 | District Total | Total | 57,129 | 6,605 | 244 | 274 | 1,867 | 18,816 | 84,935 |
| <u>MANHATTAN</u> | | | | | | | | | |
| 73 | District Total | Active | 50,128 | 12,414 | 148 | 72 | 2,189 | 18,838 | 83,789 |
| 73 | District Total | Inactive | 4,976 | 2,754 | 38 | 8 | 582 | 3,677 | 12,035 |
| 73 | District Total | Total | 55,104 | 15,168 | 186 | 80 | 2,771 | 22,515 | 95,824 |

County and District***Profiles
 Comparison of Queens and Manhattan Community Planning Districts
that correspond to Queens 36th and Manhattan's 73rd & 76th ADs**

| <u>Queens</u> | | <u>Community Planning Districts #1 and #2:</u> | |
|-------------------------|-----------|---|---------|
| Population: | 2,331,143 | | 164.15K |
| Foreign born | 46.80% | | 35.25% |
| White: | 24.00% | | 36.55% |
| Black: | 16.00 % | | 6.15 % |
| Hispanic:**** | 28.00% | | 29.15% |
| Asian: | 26.00% | | 25.40% |
| Other: | 6.00% | | 2.75% |
| 65 Years+: | 12-14 % | | 12.60% |
| <u>Manhattan</u> | | <u>Community Planning Districts #6 and #8:</u> | |
| Population: | 1,576,876 | | 187.5K |
| Foreign born: | 28.10% | | 24.25% |
| White: | 45.00% | | 71.75% |
| Black: | 12.00% | | 3.00 % |
| Hispanic: **** | 26.00% | | 8.55% |
| Asian: | 12.00% | | 13.95% |
| Other: | 5.00% | | 2.75% |
| 65 Years+: | 18-20% | | 19.40% |

* Source: NYS Board of Elections; <https://www.elections.ny.gov/EnrollmentAD.html>

** Data from Censusreporter.org; U.S. Census Bureau (2021). *American Community Survey 1- year estimates*. Retrieved from Census Reporter Profile pages for Queens and Manhattan Counties, New York. <<http://censusreporter.org/profiles/>

*** Source: NYC Department of City Planning's Community District Profiles, 2014 -2018; population averages for Queens community planning districts 1, 2 and Manhattan community planning districts 6, 8; <https://communityprofiles.planning.nyc.gov/>

**** Hispanic includes respondents of any race. Other categories are non-Hispanic.