

1 THE SECRETARY: Calendar Number  
2 363, by Senator Nozzolio, Senate Print 6696, an  
3 act to amend the State Law.

4 ACTING PRESIDENT FLANAGAN:  
5 Senator Dilan, I apologize. Senator Dilan, why  
6 do you rise?

7 SENATOR DILAN: I rise to ask  
8 several questions of the sponsor.

9 SENATOR LIBOUS: Senator Flanagan,  
10 can we ask for some order in the chamber,  
11 please. Let's have the doors closed, ask members  
12 to be in their seats. And I would ask the  
13 Sergeant-at-Arms to make sure that staff members  
14 are not going in and out of the chamber for this  
15 very important debate that we're about to take  
16 up.

17 ACTING PRESIDENT FLANAGAN:  
18 Senator Libous, your points are well-taken.

19 And Senator Dilan, if I may --  
20 Senator Skelos, why do you rise?

21 SENATOR SKELOS: I thought it was  
22 going to pass unanimously, and that's why I  
23 didn't get up sooner. But with your permission,  
24 Senator Dilan, if I could just make an opening  
25 statement, and then of course you can ask --

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1 SENATOR DILAN: Oh, yes.

2 SENATOR SKELOS: Thank you very  
3 much.

4 ACTING PRESIDENT FLANAGAN:  
5 Senator Dilan, thank you.

6 Senator Skelos.

7 SENATOR SKELOS: Thank you very  
8 much, Mr. President.

9 Today this Legislature is  
10 fulfilling its constitutional responsibility to  
11 redraw state legislative districts based on  
12 population shifts over the last 10 years.

13 I thank Senator Nozzolio, the  
14 cochair of the Legislative Task Force on  
15 Demographic Research and Reapportionment, Mike,  
16 for your good work.

17 We take our responsibility  
18 seriously, and the plan before you meets several  
19 goals. It's fair and legal, it complies with the  
20 State Constitution, the U.S. Constitution, state  
21 and federal laws, and the Voting Rights Act.

22 The population of each district is  
23 well within the standards required by the Supreme  
24 Court. The plan preserves the cause of existing  
25 districts; the vast majority of new districts

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1 contain three-quarters of their old districts.

2 Our plan respects communities of  
3 interest, including the Orthodox Jewish community  
4 in Brooklyn, the growing Asian-American community  
5 in Queens, and urban interests in and around the  
6 City of Buffalo. We create the first ever  
7 Asian-American majority Senate district in  
8 Queens, and we're very proud of that. We've  
9 maintained or strengthened African-American  
10 majority districts throughout New York City and

11 maintained Hispanic populations where they  
12 reside.

13                 The plan creates a 63th seat, as  
14 required by the Constitution of the State,  
15 Article 3. The 63rd seat is rooted in the  
16 Capital District and Upper Hudson Valley and will  
17 give another voice to the people who live in this  
18 area.

19                 The plan was crafted after 23  
20 public hearings across New York, a level of  
21 public involvement that was unprecedented. We  
22 listened to what communities were saying about  
23 our proposed lines and made many changes based on  
24 the input. Two pairs of Senate seats which were  
25 initially paired in the similar districts have

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1 been uncoupled and no longer will face  
2 primaries. As a result, this is an even stronger  
3 reapportionment plan and one I believe you can  
4 support.

5                 Today we are also reforming the  
6 process to achieve historic and lasting change,  
7 and we thank Governor Cuomo for his leadership on  
8 this.

9                 Our position has always been that  
10 in order to change the process, you must change  
11 the State Constitution. That's why we're pleased  
12 we will give first passage to an amendment that  
13 creates a truly independent commission.  
14 Democrats and Republicans in both houses,  
15 majorities and minorities, will each get two  
16 appointees, giving them equal voices on the

17 commission, and those appointees will pick the  
18 remaining two representatives.

19                   The amendment mandates public  
20 hearings to encourage public input and requires a  
21 timely review and approval process, and it  
22 eliminates LAFTOR.

23                   This amendment and this plan is a  
24 significant step forward and one that we can all  
25 be proud of.

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1                   So at this time, Mr. President, I  
2 guess Senator Dilan will have some questions of  
3 the sponsor, Senator Nozzolio.

4                   ACTING PRESIDENT FLANAGAN: Thank  
5 you, Senator Skelos.

6                   Senator Dilan.

7                   SENATOR DILAN: Mr. President, I  
8 rise to ask several questions of the sponsor of  
9 the bill.

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

13                   SENATOR NOZZOLIO: Yes,  
14 Mr. President.

15                   ACTING PRESIDENT FLANAGAN:  
16 Senator Dilan, Senator Nozzolio yields.

17                   SENATOR DILAN: Thank you very  
18 much, Senator Nozzolio.

19                   After 23 hearings and several  
20 business meetings of the LATFOR commission, we're  
21 here today to discuss the product or the

22 nonproduct that was produced by LATFOR. And also  
23 I would like to discuss what was not accomplished  
24 by this commission.

25 So today's plan was introduced late

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1 Sunday evening. It marks the first time that  
2 LATFOR did not meet before a redistricting bill  
3 was submitted or introduced. Why, then, was a  
4 LATFOR meeting called for this morning after the  
5 task force plan was already in?

6 SENATOR NOZZOLI O: Mr. President,  
7 the New York State Legislative Task Force on  
8 Demographic Research and Reapportionment is the  
9 LATFOR that Senator Dilan is referring to. It  
10 was established by Chapter 45 of the Laws of  
11 1978. It is a task force that consists of six  
12 members, including four legislators, of which  
13 Senator Dilan is one, and two nonelected citizen  
14 representatives.

15 I serve as the Senate's cochairman  
16 of the task force upon designation by our  
17 Majority Leader, Senator Skelos. The other  
18 cochairman is Assemblyman Jack McEneny. The  
19 remaining members, Senator Dilan, Assemblyman  
20 Robert Oaks and citizens representatives:  
21 Senator Skelos's appointee, Welquis Ray Lopez,  
22 and Speaker Silver's representative, Roman  
23 Hedges.

24 I certainly know that Senator Dilan  
25 and I traveled across this state together. We

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1 conducted 23 hearings in virtually every corner  
Page 5

2 of the state. And I believe the plan that was  
3 ultimately put forward by a vote today in LATFOR  
4 of 4 to 1, a bipartisan vote, was put forward as  
5 the next step in the process.

6 That the legislation was created,  
7 in particular, in compliance with all appropriate  
8 laws and legal precedents and protects minority  
9 voting rights. I'll be glad to discuss those  
10 further. But in direct response to Senator  
11 Dilan's question, Mr. President, this measure was  
12 reported by LATFOR in a 4-to-1 vote in a  
13 bipartisan fashion to proceed to the next step,  
14 which is consideration by the Senate and  
15 Assembly.

16 SENATOR DILAN: Mr. President --

17 ACTING PRESIDENT FLANAGAN:

18 Senator Dilan.

19 SENATOR DILAN: -- would he

20 continue to yield?

21 ACTING PRESIDENT FLANAGAN:

22 Senator Nozzolio, will you continue to yield?

23 SENATOR NOZZOLIO: I'll be happy

24 to yield.

25 ACTING PRESIDENT FLANAGAN:

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1 Senator Dilan.

2 SENATOR DILAN: With reference to  
3 my first question, I believe the question was why  
4 were the bills introduced before there was a vote  
5 by LATFOR.

6 SENATOR NOZZOLIO: Mr. President,

7 the measure, as you can see, is a very  
8 extensive and very technical measure before us  
9 that redistricts 150 Assembly districts and now  
10 63 Senatorial districts. It is well over 200  
11 pages -- it is 253 pages, one of the largest  
12 legislative measures that we have to consider by  
13 this house.

14 That the measure was put forward in  
15 bill form and considered by LATFOR. I should  
16 hasten to add this was not a bill considered by  
17 the Rules Committee until it was enacted by  
18 LATFOR.

19 SENATOR DILAN: Would he continue  
20 to yield?

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

23 SENATOR NOZZOLIO: Yes,  
24 Mr. President.

25 ACTING PRESIDENT FLANAGAN:

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1 Senator Dilan, Senator Nozzolio continues to  
2 yield.

3 SENATOR DILAN: When were these  
4 plans drafted? Do you have a date?

5 SENATOR NOZZOLIO: Pardon me,  
6 Senator?

7 Mr. President, I would ask  
8 respectfully to Senator Dilan to repeat the  
9 question.

10 ACTING PRESIDENT FLANAGAN: Would  
11 you please repeat the question?

12 SENATOR DILAN: The question was,  
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13 when was the plan drafted? Does Senator Nozzol i o  
14 have a date?

15                   SENATOR NOZZOLI O:   Mr. Presi dent,  
16 thi s plan was put forth -- again, complying wi th  
17 popul ati on standards, adherence to strict  
18 redi stricti ng pri nci pl es, i ncl udi ng preservi ng  
19 the cores of tradi ti onal di stricts and  
20 mai ntai ni ng tradi ti onal communi ti es of i nterest.  
21 Thi s plan put forward after the origi nal  
22 14 hearings were conducted by LATFOR. It was put  
23 forward i n the middle of January, and that an  
24 addi ti onal ni ne hearings were conducted fol l owi ng  
25 the origi nal pronouncement of the plan.

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1                   SENATOR DI LAN:   Woul d he conti nue  
2 to yi el d?

3                   ACTI NG PRESI DENT FLANAGAN:  
4 Senator Nozzol i o, wi ll you conti nue to yi el d?

5                   SENATOR NOZZOLI O:   Yes,  
6 Mr. Presi dent.

7                   ACTI NG PRESI DENT FLANAGAN:  
8 Senator Di lan.

9                   SENATOR DI LAN:   There have been  
10 countl ess comments made i n publ ic by both you and  
11 the other cochai r wi th regards to "We are worki ng  
12 out the detai ls" or "We are reachi ng an  
13 agreement." When were you handed a Senate  
14 proposal ?

15                   SENATOR NOZZOLI O:   Throug hout thi s  
16 process, Mr. Presi dent, the task force  
17 conti nual ly encouraged publ ic i nput. We sought

18 to increase public participation in the process.  
19 For the first time in our state's history this  
20 task force put forward an Internet interactive  
21 website that sought detailed information on the  
22 Internet, enabling the public to provide their  
23 input directly as well as put forward their own  
24 plans to the task force.

25                   Each public hearing of the task

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1 force was video recorded, and the recordings were  
2 available for viewing on the website. At every  
3 hearing we encouraged the public to submit  
4 redistricting plans for the Senate, Assembly, and  
5 Congress.

6                   I'm pleased to tell you that I  
7 believe this plan was the result of a very open  
8 and transparent and accessible process and, I  
9 believe, one of the most open and accessible in  
10 the history of the State of New York.

11                   I checked today that on the LATFOR  
12 website there were 156,512 visits to the LATFOR  
13 website. Including and within that group who  
14 visited there were also 1,831,523 hits to the  
15 LATFOR website.

16                   The citizens have had considerable  
17 participation or ability to participate in this  
18 process. That an initial 14 hearings were held  
19 across New York State to solicit the input of  
20 residents, community organizations, and local  
21 officials. The first round of hearings were held  
22 in Syracuse, Rochester, Albany, White Plains,  
23 Binghamton, Buffalo, Queens, the Bronx, Brooklyn,

24 Manhattan, Staten Island, Farmingdale,  
25 Old Westbury and Plattsburgh.

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1           The task force placed 37 public  
2 service announcements in newspapers around the  
3 state, including foreign language newspaper with  
4 ads placed in Chinese, Korean and Spanish. Other  
5 public service advertisements were placed in the  
6 African-American community as well as newspapers  
7 serving the Indo-Caribbean-American community.

8           Over 356 people registered to speak  
9 at the 14 public hearings that we conducted as  
10 LATFOR. In addition, hundreds of citizens  
11 submitted written statements and letters to the  
12 task force via mail, email, and faxes.

13           Senator Dilan's question asked for  
14 the draft release of a plan. After those initial  
15 14 hearings, a draft plan for the State Senate  
16 and Assembly district lines were put forward on  
17 January 26, 2012. Subsequently, after the  
18 release of that plan, an additional nine public  
19 hearings were conducted in Albany; the Bronx;  
20 Brooklyn; Manhattan; Queens; Smithtown,  
21 Long Island; Syracuse, Rochester and Buffalo.

22           So there was certainly a huge  
23 amount of public opinion that was considered by  
24 LATFOR before the plans were put forward, during  
25 the consideration of those plans, and during the

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1 second round of hearings.

2           SENATOR DILAN: Would he continue

3 to yield?

4 ACTING PRESIDENT FLANAGAN:

5 Senator Nozzolio, will you continue to yield?

6 SENATOR NOZZOLIO: Yes,

7 Mr. President.

8 ACTING PRESIDENT FLANAGAN:

9 Senator Dilan.

10 SENATOR DILAN: Senator Nozzolio,

11 I just want to step back one second because I

12 think I heard you say that these plans were

13 released on January 26. I also heard you say

14 that for the first time we've had an interactive

15 website.

16 I would just first, with respect to

17 the first point, I believe that after we held the

18 14 hearings in the second round I believe there

19 were some revisions that were made to the

20 original proposals. And I was handed a book with

21 maps only this morning at the LATFOR meeting.

22 So was there a second set of

23 proposed lines that were released? And I believe

24 that that was my question. And my question was,

25 when were you handed that plan, and what was the

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1 date? I don't believe it was January 26.

2 With reference to the second point

3 with respect to the Internet, it lacked being

4 interactive. It was the same website that was

5 used 10 years ago by LATFOR. There was nothing

6 interactive with respect to that.

7 On many occasions I requested at

8 business hearings with respect to having

9 live-streaming of the hearings. I also wrote  
10 several memos to both cochairs requesting the  
11 same, never getting a response. Is that how you  
12 recall that?

13 ACTING PRESIDENT FLANAGAN:  
14 Senator Dilan, I believe there were two questions  
15 there.

16 SENATOR DILAN: Two points.

17 ACTING PRESIDENT FLANAGAN: Which  
18 one would you rather Senator Nozzolio answer?

19 SENATOR DILAN: Both.

20 (Laughter.)

21 ACTING PRESIDENT FLANAGAN: He  
22 said he would yield to an additional question.

23 Senator Nozzolio.

24 SENATOR NOZZOLIO: I'd be happy to  
25 yield, Mr. President.

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1 SENATOR DILAN: It's going to be  
2 many questions.

3 SENATOR NOZZOLIO: And would  
4 Senator Dilan be so kind as to repeat both  
5 questions?

6 SENATOR DILAN: You know, I will  
7 do this, I will repeat the question once. But  
8 I've noticed that on many occasions I'm asked to  
9 repeat the question, and that happened many times  
10 during the course of the 23 hearings. But I will  
11 separate the questions, Mr. President.

12 The first question was, When were  
13 these plans drafted and do you have a date? And

14 I'm making reference to after the second round.

15                 SENATOR NOZZOLI O:     Senator Di lan' s  
16 question, Mr. President, I' d be happy to answer.  
17 That I tried to make the point that from the very  
18 first meeting of the task force, following the  
19 initial put-forward of plans, that this was a  
20 work in progress, that taking public input was a  
21 very important part of that process and that we  
22 continued to take public input.

23                 At Senator Di lan' s request and  
24 suggestion, which I thought was a very good one,  
25 during the second round of hearings we actually

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1 had those hearings not just in the daytime but  
2 also in the evening to allow a greater citizen  
3 participation. And those who were working during  
4 the day who might not be able to attend a hearing  
5 during daytime hours were afforded the  
6 opportunity in many of our second round of  
7 hearings because we conducted them in the late  
8 afternoon through the evening process.

9                 Each public hearing -- though I  
10 must add, Senator Di lan, it' s different this year  
11 than 10 years ago. First of all, the Internet  
12 interaction was not available 10 years ago. The  
13 technology was not yet available. And the fact  
14 that each hearing was video recorded and the  
15 entire log of hearings, the video and the  
16 transcript for those hearings, were placed on the  
17 LATFOR website so citizens could review the  
18 hearings. If they couldn' t attend, they' d at  
19 least be able to attend through the Internet,

20 watch the hearings that had taken place in the  
21 past, and make their judgments on those hearings  
22 as they viewed them on the website.

23           That this plan was finalized after  
24 the second round of hearings, which concluded a  
25 few weeks ago, and that the metes and bounds of

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1 the process are extensive. And those metes and  
2 bounds were put together in legislative format,  
3 and that that format was completed and the bill  
4 was introduced upon its completion earlier this  
5 week.

6           SENATOR DILAN: Mr. President,  
7 does the Senator continue to yield?

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

10           SENATOR NOZZOLIO: Yes,  
11 Mr. President.

12           ACTING PRESIDENT FLANAGAN:  
13 Senator Dilan.

14           SENATOR DILAN: Again, with  
15 respect to timing, when did you first have a  
16 Senate plan in hand to agree upon internally or  
17 negotiate internally with the Assembly majority  
18 or even the Governor?

19           SENATOR NOZZOLIO: Mr. President,  
20 I'm not certain what Senator Dilan is asking, but  
21 I hope that this is responsive to his question.

22           That this is part of a long  
23 process, a process that began with the initial  
24 review, continued after the first drafts of plans

25 were put forward -- I already cited the date of

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1 that delivery -- and then continued throughout  
2 the nine additional hearings that were held.  
3 They were completed just towards the end of  
4 February.

5                   And, throughout that process, we  
6 continued to take input from the citizens who  
7 were interested in the process. And that the  
8 plans that were put forward were placed in  
9 legislative form earlier this week.

10                   SENATOR DILAN: Mr. President.

11                   ACTING PRESIDENT FLANAGAN:

12 Senator Di lan.

13                   SENATOR DILAN: Does the Senator  
14 continue to yield?

15                   ACTING PRESIDENT FLANAGAN:

16 Senator Nozzolio, will you continue to yield?

17                   SENATOR NOZZOLIO: Yes,

18 Mr. President.

19                   ACTING PRESIDENT FLANAGAN:

20 Senator Di lan.

21                   SENATOR DILAN: I know that -- I  
22 believe I'm making myself really clear. The  
23 question that I asked was, when did you have the  
24 plan in your hand to negotiate with the Assembly  
25 and/or the Governor?

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1                   I know during the course of many  
2 weeks, when I was wondering what was going on,  
3 when I would ask when are we having a business  
4 meeting or when are we going to put something

5 before the commission, all I would hear is that  
6 we are negotiating. I heard this from both  
7 cochairs.

8                   So my question is, when did you  
9 receive that proposal to negotiate with all  
10 parties involved?

11                   SENATOR NOZZOLIO: Mr. President,  
12 this measure before us today was not the result  
13 of a negotiation. This was the result of a  
14 process.

15                   What Senator Dilan may be confused  
16 with is the discussions that occurred during the  
17 congressional redistricting, which were  
18 discussions that were reflective of the master's  
19 plan as the master put forward a plan for  
20 congressional redistricting. To my knowledge,  
21 there were discussions with the Assembly about  
22 congressional redistricting, and that those  
23 conversations may or may not have reached the  
24 Governor; I do not know.

25                   But what I do know is that the plan

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1 before us was not negotiated either with the  
2 Assembly or with the Governor. Rather, this plan  
3 that was put forward was a plan put forward by  
4 the Senate exclusively. And this plan, at least  
5 as far as I know, was put forward to have the  
6 consideration and ultimate approval of the LATFOR  
7 commission.

8                   SENATOR DILAN: Would he continue  
9 to yield?

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

12 SENATOR NOZZOLIO: Yes,  
13 Mr. President.

14 ACTING PRESIDENT FLANAGAN:  
15 Senator Dilan.

16 SENATOR DILAN: One more question  
17 on this point and then I'll move on.

18 But I know I'm not confused. And I  
19 believe that I can distinguish between the  
20 congressional lines that the federal court, I  
21 believe, will ultimately draw, perhaps as soon as  
22 tomorrow.

23 But my reference are to the state  
24 lines, the Assembly and the Senate. I believe  
25 that there were discussions between both cochair

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1 and perhaps maybe even the leaders with respect  
2 to the same. And I know the process, and I know  
3 that for many cycles with respect to  
4 redistricting and reapportionment it has been the  
5 tradition that the Senate draw its lines and the  
6 Assembly draw its lines. So maybe there isn't  
7 much negotiation that goes on, but there are  
8 discussions.

9 So again, my question was, when did  
10 you receive the plan to have those discussions?

11 SENATOR NOZZOLIO: Mr. President,  
12 these are the lines that are before us today,  
13 both the Assembly and Senate lines that were  
14 developed by LATFOR.

15 I am not familiar with the  
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16 negotiations that Senator Di lan is asking about,  
17 and that I originally thought he was talking  
18 about news accounts that discussed negotiations  
19 or alleged -- alluded to negotiations regarding  
20 the congressi onal plans.

21                   This was not a negotiated si tuati on  
22 that we have before us rather than it is a plan  
23 that was the outgrowth of a -- what I believe a  
24 very open process that heard from hundreds of  
25 citizens. And that is a process that culminated

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1 in the completi on of the plan that's before us  
2 today.

3                   SENATOR DI LAN: Mr. Presi dent, i f  
4 he woul d conti nue to yi el d.

5                   ACTING PRESIDENT FLANAGAN:  
6 Senator Nozzol i o, wi ll you conti nue to yi el d?

7                   SENATOR NOZZOLI O: Yes,  
8 Mr. Presi dent.

9                   ACTING PRESIDENT FLANAGAN:  
10 Senator Di lan.

11                   SENATOR DI LAN: Just one comment  
12 before the questi on. And that is that I know as  
13 recently as last week and also thi s week I di d  
14 hear news accounts wi th respect to negoti ati ons.  
15 And I also heard certain comments by the Govern or  
16 indi cating that the second proposal showed  
17 improvement and they seemed fairer. There was  
18 also di scussi on about an amendm ent,  
19 consti tuti onal amendm ent, commi ssi ons.

20                   So apparently there were some

21 negotiations that were going on. If you were not  
22 part of those negotiations, I would like to hear  
23 that.

24 SENATOR NOZZOLIO: Mr. President,  
25 I believe that certainly that these plans, our

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1 initial plan that was put forward for Senate and  
2 Assembly lines was certainly public, and that  
3 many had the opportunity to review those plans,  
4 including the Governor of the State of New York.

5 That those plans, in my opinion,  
6 were first drafts, and that as we proceeded to  
7 the second round of hearings and finalized the  
8 plans those certainly were made public. And it  
9 was our intention to make those plans as in total  
10 and full compliance with the United States  
11 Constitution and the Constitution of the State of  
12 New York, the Voting Rights Act, and all other  
13 applicable federal and state statutes.

14 We also established a number of  
15 successes regarding improvements in deviations  
16 and looked to other issues that I'd be glad to  
17 discuss about the merits of this plan,  
18 particularly in what this plan does to preserve,  
19 protect, and restore in some cases those minority  
20 majority districts, the 13 of them in New York  
21 State.

22 SENATOR DILAN: Mr. President,  
23 would the Senator continue to yield?

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

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1 SENATOR NOZZOLI O: Yes,  
2 Mr. Presi dent.

3 ACTING PRESIDENT FLANAGAN:  
4 Senator Di lan.

5 SENATOR DILAN: Senator, why after  
6 recei ving the census data in March of 2011 di d  
7 the deci sion to compl y wi th the pri soner census  
8 law not come unti l August 2011?

9 SENATOR NOZZOLI O: Mr. Presi dent,  
10 at the very fi rst LATFOR hearing that took place  
11 in July of 2011 I was asked the questi on whether  
12 or not the Senate was goi ng to compl y wi th I  
13 believe it is Secti on 20 -- Part 20 of Chapter 57  
14 of the Laws of 2010. That' s otherwi se known as  
15 the pri soner recounti ng measure.

16 My comments then were my comments  
17 throughout this process, that I believe strongly  
18 that LATFOR needed to compl y wi th the letter and  
19 spi rit of every statute at the state and federal  
20 level relevant to redi stricti ng. That thi s  
21 statute, regardl ess of its cumbersome nature,  
22 regardl ess of the fact that it di d not provi de  
23 wi th i t one si ngle regul atory advi ce, that  
24 nonethel ess LATFOR must compl y wi th that statute.

25 I made it very clear, sai d i t many

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1 times, sai d i t at many heari ngs that thi s task  
2 force, as long as I was to serve as a cochai r,  
3 was to compl y to the letter and spi rit of the  
4 pri soner recounti ng law.

5 I' m happy to say, Mr. Presi dent,

6 that LATFOR was successful in ensuring that both  
7 the letter and spirit of Part 20 of Chapter 57 of  
8 the Laws of 2010 was literally complied with and  
9 within the spirit of that law. That members of  
10 the task force took it upon themselves to roll up  
11 their sleeves and go through the over 50,000  
12 prison inmates in our state, go through records  
13 of detention for those prisoners and determine,  
14 even though there was no census-oriented question  
15 on the application when someone is placed in  
16 prison -- this is a job for the United States  
17 Census, to locate prisoners not at the place of  
18 their incarceration but at the place of their  
19 last known address.

20 I should parenthetically add that  
21 the states that have adopted this process have  
22 scrapped it because of some of the questions  
23 regarding it. But New York went ahead at the  
24 direction of LATFOR and counted every single  
25 prisoner possible: First, taking away every

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26

1 prisoner in every correctional facility in this  
2 state to not be counted, then codifying -- it's  
3 called geocoding -- every single prisoner who had  
4 a last known address and placing that prisoner at  
5 the site of their last known address.

6 That was a very difficult task and  
7 one that I'm very proud to say that had complied  
8 within every possible way. For Senator Dilan to  
9 suggest otherwise is just not the case. That I  
10 believe that this task force fully complied with  
11 the law, fully complied with its spirit, did a

12 yeoman's job even without any regulatory  
13 guidance, even without any statutory insight or  
14 direction, and should be complimented for its  
15 work in complying with this statute.

16 SENATOR DILAN: Mr. President,  
17 does the Senator continue to yield?

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

20 SENATOR NOZZOLIO: Yes,  
21 Mr. President.

22 SENATOR DILAN: First of all, I  
23 recall the first few hearings that we held where  
24 I asked questions with respect to the prisoner  
25 reallocation law and also wrote both cochairs a

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27

1 letter with regard to compliance. I was told  
2 that it was not the Senator's issue, that that  
3 was Commissioner Fischer's issue, the  
4 Commissioner of Corrections.

5 And also I know that Maryland and  
6 Delaware successfully and timely implemented  
7 similar legislation.

8 Also, I merely asked the question  
9 as to why it took so long from March to August.  
10 I didn't suggest anything. I actually commend  
11 the commission that after the first few hearings  
12 they finally saw the sunshine and said they would  
13 comply. So the question was asked of timing,  
14 nothing else. I made no suggestion. But we'll  
15 move on.

16 I would like to know why did the

17 decision to increase the size of the Senate come  
18 another four months after that, meaning after  
19 August.

20 SENATOR NOZZOLI O: Senator, the  
21 question is?

22 SENATOR DILAN: The question is,  
23 why did the decision to increase the size of the  
24 Senate come another four months after there was a  
25 decision to comply with the prisoner law?

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1 Meaning four months after August.

2 SENATOR NOZZOLI O: Mr. President,  
3 the decision that governs the size of the  
4 Legislature, both the Assembly and the Senate, is  
5 found in the New York State Constitution,  
6 Article 3, Section 4.

7 It's very straightforward for the  
8 Assembly. The Assembly is fixed at 150 members  
9 in the State Constitution.

10 The formula that has been followed  
11 by the courts is dependent on final population  
12 numbers. And that counsel who represented the  
13 Senate in 2002 issued a memo in 2012 regarding  
14 the propriety of establishing a 63rd seat. The  
15 memo from our counsel is on the LATFOR website,  
16 and that decision to create a 63rd seat is, in  
17 accepting the counsel's advice, a  
18 constitutionally sound decision, one that was  
19 established by the same counsel who provided the  
20 legal analysis for the New York State Senate in  
21 2002.

22 SENATOR DILAN: Will the Senator  
Page 23

23 continue to yield?

24 ACTING PRESIDENT FLANAGAN:

25 Senator Nozzolio, will you continue to yield?

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1 SENATOR NOZZOLIO: Yes,

2 Mr. President.

3 ACTING PRESIDENT FLANAGAN:

4 Senator Dilan.

5 SENATOR DILAN: Senator Nozzolio,

6 why were my requests during the first round to

7 determine the size of the Senate early were

8 denied or ignored?

9 As you recall, many times during

10 the course of the first round I had asked what

11 are we basing the plans on, 62 or 63. At that

12 time I also indicated that the public had a right

13 to know and those that were interested in

14 submitting plans should know are we basing it on

15 62 or 63. All those requests were denied during

16 the first round.

17 Many submitted plans to LATFOR

18 based on 62. So why were those requests ignored

19 or denied?

20 SENATOR NOZZOLIO: Mr. President,

21 those requests of Senator Dilan, which are

22 bona fide, were neither ignored nor denied. That

23 the submission to counsel, the analysis by

24 counsel was not completed until later in the

25 calendar year 2011.

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1 SENATOR DILAN: Does he continue

2 to yield?

3 ACTING PRESIDENT FLANAGAN:

4 Senator Nozzolio, will you continue to yield?

5 SENATOR NOZZOLIO: Yes,

6 Mr. President.

7 ACTING PRESIDENT FLANAGAN:

8 Senator Dilan.

9 SENATOR DILAN: During the course  
10 of the first and second round there were many who  
11 testified against a 63rd seat, there were many  
12 who indicated that -- and submitted formulas that  
13 indicate that no matter how you look at the  
14 formula, you would get 62 if you use it  
15 consistently. And if you use the formula in  
16 another way, because there's like two formulas,  
17 you may get 62 or 64.

18 How did you determine or anyone  
19 determine that the size of the Senate should be  
20 63?

21 SENATOR NOZZOLIO: Mr. President,  
22 counsel's opinion, which I believe is extremely  
23 thorough -- the analysis in checking and  
24 cross-checking is that we believe the counsel's  
25 opinion is constitutionally sound. It's a

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1 provision on the LATFOR website. Everyone is  
2 free to analyze that provision.

3 SENATOR DILAN: Does he continue  
4 to yield?

5 ACTING PRESIDENT FLANAGAN:

6 Senator Nozzolio, will you continue to yield?

7 SENATOR NOZZOLIO: Yes,

8 Mr. President.

9 ACTING PRESIDENT FLANAGAN:

10 Senator Dilan.

11 SENATOR DILAN: I would like to  
12 know, when the decision was made to increase the  
13 size of the Senate to 63, were the numbers or the  
14 data for prisoners also calculated in that  
15 formula, with the prisoners being allocated to  
16 their home districts?

17 SENATOR NOZZOLIO: Senator Dilan's  
18 question to me is right on target, that -- and I  
19 think it answers his line of questioning just  
20 made previous. That the population counts are  
21 critical to the analysis done relative to whether  
22 or not New York and its Constitution requires the  
23 addition of a 63rd seat in the Senate based on  
24 population growth.

25 May I add parenthetically,

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1 Mr. President, the population of the State of  
2 New York did grow in the last 10 years. People  
3 think that because New York lost two  
4 congressional seats that the population of  
5 New York actually declined. In fact, that's not  
6 the case. The population of the State of  
7 New York grew almost by half a million people.  
8 It's about 487,000 or so additional census counts  
9 in 2010 from the year 2000.

10 The prison count, which basically  
11 requires prisoners to be taken away from the  
12 place of incarceration to the location of their

13 last known address, is relevant to this  
14 discussion.

15                   And that that prison count issue,  
16 as Senator Dilan well knows and was very much a  
17 part of -- and a very positive part of, I should  
18 add -- that Senator Dilan knows that the prison  
19 count, as hard as we pushed and as much as we  
20 could be established, was not completed until the  
21 end of 2011. That's when the final analysis of  
22 our attorney was done and completed and put  
23 forward on the LATFOR website regarding whether  
24 or not there should be a 63rd Senate seat.

25                   SENATOR DILAN: Will he continue

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1 to yield?

2                   ACTING PRESIDENT FLANAGAN:

3 Senator Nozzolio, will you continue to yield?

4                   SENATOR NOZZOLIO: Yes,

5 Mr. President.

6                   ACTING PRESIDENT FLANAGAN:

7 Senator Dilan.

8                   SENATOR DILAN: Very simply, my

9 question was that data used in the

10 calculation of determining the size of the

11 Senate. That's all I asked.

12                   SENATOR NOZZOLIO: Mr. President,

13 I beg Senator Dilan's pardon. Would you be so

14 kind to ask Senator Dilan to repeat the

15 question?

16                   ACTING PRESIDENT FLANAGAN:

17 Senator Dilan, I apologize. Would you be kind

18 enough to repeat the question for Senator

19 Nozzol i o?

20                   SENATOR DI LAN:    Sure.    Just  
21 simply, I wanted to know if the prisoner data was  
22 used in calculating the size of the Senate.  
23 That's all I asked.

24                   SENATOR NOZZOLI O:   Mr. Presi dent,  
25 it's my understanding that the counsel who

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1 provided the analysis I looked at both options, the  
2 option of counting as done by exclusively the  
3 U. S. Census and the counting as done as required  
4 by New York State statute.

5                   Both analyses completed by the  
6 counsel indicated that there were  
7 constitutionally sound reasons to put forward the  
8 63rd seat and required, in fact, the  
9 establishment of a 63rd Senate seat.

10                   ACTING PRESIDENT FLANAGAN:  
11 Senator Di lan.

12                   SENATOR DI LAN:    Woul d he conti nue  
13 to yi el d on that?

14                   ACTING PRESIDENT FLANAGAN:  
15 Senator Nozzol i o, wi ll you conti nue to yi el d?

16                   SENATOR NOZZOLI O:    Yes,  
17 Mr. Presi dent.

18                   SENATOR DI LAN:    So your answer was  
19 yes, that the data was used in calculating the  
20 size of the Senate? Is the answer yes or no?

21                   SENATOR NOZZOLI O:    Mr. Presi dent,  
22 I thi nk I've answered the questi on. But can you  
23 rei terate --

24 SENATOR DILAN: Can you answer  
25 my --

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1 ACTING PRESIDENT FLANAGAN:

2 Senator Di lan.

3 SENATOR DILAN: I'm sorry.

4 ACTING PRESIDENT FLANAGAN: Woul d  
5 you go through the chai r, please.

6 SENATOR DILAN: I'm sorry. I've  
7 been doi ng that.

8 SENATOR NOZZOLI O: Mr. Presi dent,  
9 respectfully, I believe I've answered Senator  
10 Di lan's question. But I will repeat the answer.

11 SENATOR DILAN: Thank you.

12 SENATOR NOZZOLI O: That the  
13 counsel analyzed thi s issue both using the data  
14 from the Uni ted States Census counts as well as  
15 the data that was placed in compli ance with a  
16 New York State special statute that required  
17 prisoner counti ng at the last known address.

18 Hi s analysi s looked at both  
19 numbers, and that it's my understanding that the  
20 counsel concluded that it was -- in a  
21 consti tutionally sound manner for ei ther  
22 provisi on that the 63rd Senate seat was in fact  
23 requi red.

24 ACTING PRESIDENT FLANAGAN:  
25 Senator Di lan.

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1 SENATOR DILAN: Wi ll Senator  
2 Nozzol i o conti nue to yi el d?

3 ACTING PRESIDENT FLANAGAN:  
Page 29

4 Senator Nozzolio, will you continue to yield?

5 SENATOR NOZZOLIO: Yes,

6 Mr. President.

7 ACTING PRESIDENT FLANAGAN:

8 Senator Dilan.

9 SENATOR DILAN: I don't think that  
10 answers my question, because I'm talking about --  
11 I'm not talking about constitutionality here, I'm  
12 talking about how the formula and the data that  
13 was used to determine the size of the Senate.

14 And very simply, was the data used, yes or no?

15 SENATOR NOZZOLIO: Mr. President,  
16 I deeply regret Senator Dilan's disappointment in  
17 my answer. I've already answered it twice. I  
18 would be glad to answer it a third time.

19 That the counsel established his  
20 review based on the United States Census counts  
21 and the United States Census counts as modified  
22 by New York State statute.

23 His analysis on both counts came to  
24 the same conclusion, a constitutionally sound  
25 principle that in his opinion, as placed on the

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1 website of LATFOR, that the 63rd seat is in fact  
2 required as a result of the population numbers  
3 established in 2010.

4 ACTING PRESIDENT FLANAGAN: Thank  
5 you, Senator Nozzolio.

6 Senator Dilan.

7 SENATOR DILAN: Will Senator  
8 Nozzolio continue to yield?

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

11 SENATOR NOZZOLIO: Yes,  
12 Mr. President.

13 ACTING PRESIDENT FLANAGAN:  
14 Senator Dilan.

15 SENATOR DILAN: Okay. Moving on  
16 to another step here. I would like to know,  
17 Senator Nozzolio -- are you listening?

18 SENATOR NOZZOLIO: I'll continue  
19 to yield, Mr. President.

20 SENATOR DILAN: The question is --

21 ACTING PRESIDENT FLANAGAN: Excuse  
22 me, Senator Dilan. I'm fairly and keenly aware  
23 Senator Nozzolio is doing his best to listen to  
24 your questions, having answered every single one  
25 of them. So if you would like him to continue to

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1 yield --

2 SENATOR DILAN: I've made no  
3 comment that merits your comments.

4 ACTING PRESIDENT FLANAGAN:  
5 Senator Dilan, do you have a question for Senator  
6 Nozzolio?

7 SENATOR DILAN: Yes, I do.

8 Senator Nozzolio, what was the  
9 predominant criteria used in determining the  
10 proposed legislative districts?

11 SENATOR NOZZOLIO: Senator Dilan  
12 asks extremely important questions. There are  
13 many criteria. Certainly the process in and of  
14 itself, the seeking of the public opinion, the

15 advertising of the potential for public opinion  
16 to be placed at public hearings on the LATFOR  
17 website.

18 I'd also like to add that the  
19 federal Constitution requires certain important  
20 elements regarding minority representation. And  
21 I am personally very pleased that we worked  
22 especially hard to protect, preserve, and  
23 maintain minority representation in the New York  
24 State Senate. The plan put forward clearly  
25 conforms with the United States Constitution, the

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1 Constitution of the State of New York, and all  
2 applicable federal and state statutes, especially  
3 the Voting Rights Act.

4 This plan put and builds on a  
5 strong history that this Senate has had in  
6 creating minority representation. In the last  
7 redistricting 10 years ago, this house created an  
8 Hispanic Senate district in Queens that is now  
9 represented by Senator Peralta. The Senate  
10 redistricting efforts in the past have  
11 established 13 minority State Senate districts in  
12 New York State.

13 This plan that is before us today  
14 preserves and protects each and every one of  
15 those 13 minority districts and protects and  
16 preserves and restores five minority districts in  
17 the Senate that actually fell below the  
18 50 percent minority rate because of the shifting  
19 population in New York City.

20 That protection and that plan -- I  
21 should also add that the plan increases the black  
22 population in the district represented by  
23 Senator Perkins by a full 2 percentage points.

24 I'm especially proud that this  
25 plan, Senator Skelos mentioned it, creates the

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1 very first Asian-American majority-minority  
2 district in New York State. It was the result of  
3 many hours of testimony, helpful input from the  
4 Asian community in Queens, including  
5 organizations such as the Asian-American  
6 Community Coalition on Redistricting and  
7 Democracy, and is almost an identical reflection  
8 of the plans provided the task force by the  
9 Asian-American Legal Defense and Education Fund.

10 This plan offered today contains  
11 14 majority-minority districts. And that, to me,  
12 Mr. President, is something to be proud of. In  
13 light of shifting sands and shifting population,  
14 this Senate has stalwartly supported and complied  
15 with the Voting Rights Act.

16 There are other issues Senator  
17 Dilan -- in terms of his question, the proposed  
18 plan clearly complies with all applicable  
19 population deviation requirements of the United  
20 States Constitution, all those federal statutes  
21 and applicable case law.

22 The plan today improves the Senate  
23 district population deviation numbers by  
24 10 percent from a decade ago. And hear me out on  
25 this so there's no misunderstanding. The former

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1 plan had a judicially acceptable standard  
2 deviation of 9.78 percent. The plan proposed  
3 today has a standard deviation of 8.80 percent.  
4 That is a 10 percent improvement over the  
5 deviation that was already judicially acceptable.

6           So Senator Dilan's question,  
7 Mr. President, deals with the deviation issues,  
8 deals with minority representation. There are  
9 also a number of state constitutional standards.  
10 Among those are maintaining communities of  
11 interest, maintaining cores of existing  
12 districts, maintaining a continuity of  
13 representation, and following all appropriate  
14 traditional redistricting principles.

15           I'd be glad to discuss those at  
16 further detail with Senator Dilan, but I think in  
17 general those are in place. Except if I may,  
18 Mr. President, let me just add one more item, the  
19 cores of existing districts. Senator Skelos  
20 mentioned this in his opening remarks.

21           I'd like to put forward to this  
22 body that over 68 percent of the districts in  
23 this plan contain and maintain at least  
24 70 percent of the core of the existing district.  
25 Let me state that again. Virtually 70 percent of

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1 the districts in this plan maintain at least a  
2 core of 70 percent of the existing district.

3           That is a state constitutional  
4 element of redistricting. Maintaining the cores

5 of existing districts are exactly what this plan  
6 proposes.

7 ACTING PRESIDENT FLANAGAN:

8 Senator Dilan.

9 SENATOR DILAN: Does the Senator  
10 continue to yield?

11 ACTING PRESIDENT FLANAGAN:

12 Senator Nozzolio, will you continue to yield?

13 SENATOR NOZZOLIO: Yes,  
14 Mr. President.

15 ACTING PRESIDENT FLANAGAN:

16 Senator Dilan.

17 SENATOR DILAN: One comment first,  
18 Senator Nozzolio. I believe that you indicated  
19 that it was 9.7 percent deviation and now 8.8.  
20 If my math is correct, I believe that's less than  
21 a 1 percent change, not significant. However --

22 SENATOR NOZZOLIO: If I may,  
23 Mr. President, I believe that was a question.  
24 I'd like to respond to it.

25 SENATOR DILAN: That was a

♀  
1 comment.

2 SENATOR NOZZOLIO: That I don't  
3 believe Senator Dilan heard the appropriate  
4 numbers. The standard acceptable --

5 SENATOR DILAN: If you'd like to  
6 respond, that's fine.

7 ACTING PRESIDENT FLANAGAN: Excuse  
8 me. Excuse me.

9 Senator Nozzolio, please continue.

10 SENATOR NOZZOLIO: Thank you,  
Page 35

11 Mr. President.

12           The former plan, the plan that  
13 exists today for those Senate districts that we  
14 are now representing had an acceptable -- by the  
15 courts -- standard deviation of 9.78 percent.

16           This plan that is on your desks  
17 today had a standard deviation of 8.80 percent.  
18 That is clearly a point less. It's virtually  
19 10 percent better a deviation in the sense of  
20 closure. By the math that I'm familiar with,  
21 it's a 10 percent improvement.

22           ACTING PRESIDENT FLANAGAN:

23 Senator Dilan.

24           SENATOR DILAN: Thank you. Does  
25 the Senator continue to yield?

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1           ACTING PRESIDENT FLANAGAN:

2 Senator Nozzolio, will you continue to yield?

3           SENATOR NOZZOLIO: Yes,

4 Mr. President.

5           SENATOR DILAN: Mr. President, I  
6 will have only a few more questions. I have a  
7 lot more, but I would like some of my colleagues  
8 to also get involved in this conversation, so  
9 I'll try to wrap up as soon as possible.

10           ACTING PRESIDENT FLANAGAN: Thank  
11 you, Senator Dilan.

12           SENATOR DILAN: With respect to  
13 drafting of this plan, I as a member of LATFOR  
14 was not included in the drafting of this plan,  
15 and many decisions and actions from the

16 formulation of the plan through to the  
17 introduction were not made by LATFOR. So whose  
18 plan is this? Who drew the plan?

19 SENATOR NOZZOLIO: Mr. President,  
20 that the plan proposed today is the result of  
21 constitutionally acceptable principles. It  
22 follows the Constitution of the State of  
23 New York, the Constitution of the United States,  
24 all applicable federal and state statutes.

25 This plan is the evolution of

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1 suggestions put forward by the public,  
2 suggestions put forward by members of this body,  
3 suggestions put forward by the citizen  
4 representatives to the task force and other  
5 legislative members of the task force.

6 ACTING PRESIDENT FLANAGAN:  
7 Senator Di Lan.

8 SENATOR DILAN: Does the Senator  
9 continue to yield?

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

12 SENATOR NOZZOLIO: Yes,  
13 Mr. President.

14 SENATOR DILAN: Senator,  
15 throughout this process you have stated that this  
16 has been the most "open and transparent" process  
17 and product to date.

18 Considering the items we've just  
19 discussed -- the request to stream hearings and  
20 meetings, insufficient notice of hearings and  
21 meetings, no public drafting sessions, lack of

22 clearly defined criteria, and the determination  
23 of the size of the Senate prior to ratification  
24 of the adjusted census data -- the question is,  
25 do you believe that this product is a result of a

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1 fair and open process?

2                   SENATOR NOZZOLIO: Mr. President,  
3 conducting 23 hearings across the state, having  
4 1.8 million people visit the LATFOR website with  
5 156,000 individuals who actually went through the  
6 website, hearings in every corner of the state,  
7 interactive website, including the provision of  
8 allowing submission of plans through the website,  
9 of viewing each and every public hearing on the  
10 website, with over 700 individuals presenting  
11 testimony, with hundreds of others submitting  
12 plans -- yes, Mr. President, I believe that this  
13 plan and this process was open and transparent  
14 and that the submissions placed by individuals  
15 were the direct result of -- for instance, the  
16 Asian-American seat being created in Queens, the  
17 result of 10 hours of hearings in the Borough of  
18 Queens, a number of meetings with residents of  
19 Queens who sought input, placement in foreign  
20 language newspapers as well as other vehicles to  
21 communicate those public hearings, that the  
22 opportunity for citizens to present testimony  
23 past the traditional working hour into the  
24 evening for many of the hearings, those add up,  
25 Mr. President, to being -- Mr. President, can I

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1 have some order, please?

2 ACTING PRESIDENT FLANAGAN:

3 Senator Nozzolio, I think you achieved your  
4 purpose just by stating it.

5 If we could have some order in the  
6 house, please.

7 SENATOR NOZZOLIO: Thank you,  
8 Mr. President.

9 Those video transcripts were  
10 available to the public for full review of every  
11 aspect of every hearing. I think that the  
12 placement of counsel's memos on the website led  
13 to a number of things that this task force should  
14 be very proud of in terms of putting forth  
15 information to the public.

16 ACTING PRESIDENT FLANAGAN:  
17 Senator Dilan.

18 SENATOR DILAN: Mr. President, I  
19 would like to thank Senator Nozzolio for his  
20 answers, and I look forward to working with you  
21 in the future.

22 ACTING PRESIDENT FLANAGAN: Thank  
23 you, Senator Dilan.

24 Is there any other Senator wishing  
25 to be heard?

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1 Senator Gianaris.

2 SENATOR GIANARIS: Good evening,  
3 Mr. President.

4 ACTING PRESIDENT FLANAGAN: Good  
5 evening.

6 SENATOR GIANARIS: Happy Sunshine  
Page 39

7 Week to you.

8                   Would the sponsor yield for some  
9 questions, please.

10                   ACTING PRESIDENT FLANAGAN:

11 Senator Nozzolio, will you yield?

12                   SENATOR NOZZOLIO: I'd be happy to  
13 yield, Mr. President.

14                   ACTING PRESIDENT FLANAGAN:

15 Senator Gianaris.

16                   SENATOR GIANARIS: Mr. President,  
17 I'd like to ask the sponsor -- he mentioned in  
18 his previous conversation with Senator Dilan the  
19 total standard deviation figure, which was  
20 8.8 percent. I'd like to ask him, what is the  
21 average deviation figure in this plan?

22                   SENATOR NOZZOLIO: Average  
23 deviation? Mr. President, through you, I'm not  
24 familiar with that as a term of deviation  
25 assessment placed on those redistricting plans.

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1                   SENATOR GIANARIS: I'll be happy  
2 to explain, Mr. President, if --

3                   SENATOR NOZZOLIO: If I may.

4                   SENATOR GIANARIS: Yes.

5                   SENATOR NOZZOLIO: The courts have  
6 clearly focused on total deviation as a criteria  
7 for legislative redistricting. The Supreme Court  
8 case of Baker v. Carr established "one person,  
9 one vote." But through judicial history there  
10 had been windows that opened primarily for other  
11 local governments and state governments. And the

12 traditional standard deviation and total  
13 deviation allowed by our judicial system is what  
14 the focus of attention has been.

15           The standard deviation of the  
16 current plan, to reiterate to my colleague, is  
17 9.78 percent. The standard deviation of the plan  
18 proposed is 8.80 percent.

19           ACTING PRESIDENT FLANAGAN:

20 Senator Gianaris.

21           SENATOR GIANARIS: Mr. President,  
22 if the sponsor would continue to yield.

23           ACTING PRESIDENT FLANAGAN:

24 Senator Nozzolio, will you continue to yield?

25           SENATOR NOZZOLIO: Yes,

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1 Mr. President.

2           SENATOR GIANARIS: I understand  
3 the total deviation number, and that represents a  
4 member of the single most populated to the single  
5 least populated district and what the difference  
6 is in between those two. I understand his  
7 answers in that regard.

8           What I'm asking about is how off of  
9 the target number -- in other words, there is a  
10 mean that all of the districts are supposed --  
11 I'm going to wait, Mr. President, because I don't  
12 want to have to repeat my question.

13           Okay. The number of 307,356 is the  
14 number each Senate district would have if they  
15 were equally populated. Now, some are higher and  
16 some are lower in this plan, and I understand the  
17 deviation from the single highest to the single

18 lowest is 8.8 percent.

19                   What I'm asking is, on average, how  
20 off of that 307,356 number are the districts in  
21 this plan?

22                   SENATOR NOZZOLIO: Mr. President,  
23 because that number is not a relevant number for  
24 judicial determination, I do not have that at my  
25 disposal.

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1                   SENATOR GIANARIS: If the sponsor  
2 would continue to yield, Mr. President.

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

5                   SENATOR NOZZOLIO: Yes,  
6 Mr. President.

7                   ACTING PRESIDENT FLANAGAN:  
8 Senator Gianaris.

9                   SENATOR GIANARIS: I don't agree  
10 that that is not a relevant consideration for the  
11 courts. I'll be happy to provide that number for  
12 him. It is 3.67 percent.

13                   It is also the largest that that  
14 number has ever been in the history of  
15 redistricting in this state. Which means the  
16 plan that we have before us today has the largest  
17 disparity, on average, among districts that we  
18 have ever seen in a plan before the state.

19                   Does the sponsor not see a problem  
20 with that?

21                   SENATOR NOZZOLIO: Mr. President,  
22 I stand by my previous answer.

23 ACTING PRESIDENT FLANAGAN:

24 Senator Gianaris.

25 SENATOR GIANARIS: If the sponsor

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1 would continue to yield.

2 ACTING PRESIDENT FLANAGAN:

3 Senator Nozzolio, will you continue to yield?

4 SENATOR NOZZOLIO: Yes,

5 Mr. President.

6 SENATOR GIANARIS: Is it the  
7 sponsor's belief that it would not be possible to  
8 create a plan with a lower deviation, either  
9 total standard or average, than that which we  
10 have before us today?

11 SENATOR NOZZOLIO: Mr. President,  
12 through you. Possibility is not my  
13 consideration, Mr. President. That I'm  
14 proffering a plan, as the Senate is considering a  
15 plan, that has a 10 percent improvement over the  
16 deviations that have been already accepted by a  
17 court 10 years ago.

18 SENATOR GIANARIS: If the sponsor  
19 would again continue to yield.

20 ACTING PRESIDENT FLANAGAN:

21 Senator Nozzolio, will you continue to yield?

22 SENATOR NOZZOLIO: Yes,

23 Mr. President.

24 SENATOR GIANARIS: I would  
25 suggest, Mr. President, that possibilities should

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1 weigh in our minds because it is simply not

2 acceptable to say that it is desirable to have

3 districts that are so severely over- and  
4 underpopulated one from another, because that  
5 dilutes voting strength of residents of this  
6 state.

7                   And so I would respectfully  
8 disagree. To suggest that the possibility that  
9 we can make a better plan is not relevant to the  
10 sponsor I find outrageous and not acceptable and  
11 something that the courts will ultimately pass  
12 judgment on.

13                   The fact is, there are  
14 possibilities of doing this better. There was a  
15 plan submitted by the group Common Cause which  
16 had a total standard deviation of 6 percent, far  
17 lower than 8.8 and much lower than the 9.7 you  
18 were talking about earlier. And the average --

19                   ACTING PRESIDENT FLANAGAN: Senator  
20 Gianaris -- Senator Gianaris. Are you speaking  
21 on the bill, or are you asking Senator Nozzolio  
22 to yield to a question?

23                   SENATOR GIANARIS: I'm asking him  
24 to yield to a question.

25                   ACTING PRESIDENT FLANAGAN: Thank

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1 you.

2                   SENATOR GIANARIS: I would like to  
3 continue stating the premise of my question.

4                   That Common Cause plan not only has  
5 a drastically lower standard total deviation but  
6 also has a drastically lower average deviation of  
7 1.5 percent.

8 Now, does the sponsor not think  
9 that if we could make a plan that's better, that  
10 creates the districts with more equal population  
11 than that that's before us today, that that would  
12 not be desirable?

13 SENATOR NOZZOLIO: Mr. President,  
14 of course I would love to see a better plan. Of  
15 course I would like to see Senator Gianaris  
16 happy. He may consider a better plan that we put  
17 forward; the second draft I think Senator  
18 Gianaris may have liked a lot better than the  
19 first draft that we put forward.

20 The fact of the matter is we're  
21 dealing in the reality. And I would like to see  
22 a better plan for a lot of different issues  
23 before this Legislature.

24 This is an issue, though, that we  
25 have to deal with the decisions of the courts.

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1 Decisions of the courts focus on standard  
2 deviation, not what would be a better possible  
3 deviation.

4 That in fact this deviation is a  
5 deviation that is well accepted within the  
6 judicial standards. It is a deviation that  
7 improves over the last deviation. And that I  
8 believe that it's a success of this plan to have  
9 a lesser standard deviation as required. And I  
10 think the court will say "You did a better job  
11 than was done in the last redistricting by the  
12 improvement of the standard deviation," which is  
13 the standard test for judicial review on this

14 subject.

15 SENATOR GIANARIS: Mr. President,  
16 if the sponsor would continue to yield.

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

19 SENATOR NOZZOLIO: Yes,  
20 Mr. President.

21 ACTING PRESIDENT FLANAGAN:  
22 Senator Gianaris.

23 SENATOR GIANARIS: I would ask the  
24 sponsor, is the standard to which he's holding  
25 himself to do the bare minimum legally acceptable

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1 that would be passed on by the courts or to do  
2 something that's in the best interests of the  
3 people by establishing a plan that has more equal  
4 population among the districts and less of a  
5 deviation?

6 Because it seems like every answer  
7 is what the courts would accept, not what  
8 necessarily would make good policy.

9 SENATOR NOZZOLIO: On the  
10 contrary, Mr. President. Maybe Senator Gianaris  
11 wasn't paying attention to the comments I made  
12 earlier focusing on -- let me reiterate some of  
13 those.

14 That I'm very proud of what this  
15 proposal does in establishing a new minority  
16 district in the Asian community not too far from  
17 the district that Senator Gianaris now  
18 represents: the first other Asian-American

19 Senate majority-minority district in New York  
20 State.

21 Of the 13 minority districts in  
22 New York State, five of them were below the  
23 50 percent level as a result of shifting  
24 population in New York State, and this plan  
25 restores their minority representation status.

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1 That was something that we worked very hard to  
2 achieve.

3 The cores of existing districts is  
4 something that is a constitutionally accepted and  
5 required principle in redistricting, and we  
6 established over 70 percent of the districts  
7 proposed by this plan have at least 70 percent of  
8 the core of their existing district as  
9 established.

10 We're trying to push and establish  
11 the best possible plan, the most transparent  
12 plan, the most citizen-inputted plan possible.  
13 And that I think that the proof is in the  
14 demographics, and those demographics are that we  
15 have taken -- in spite of declining populations  
16 in many areas of the state, we have improved  
17 those districts that are essentially minority  
18 districts and we have focused on improving  
19 standard deviations and we have focused on  
20 improving the numbers of cores of existing  
21 districts. Each of those items, we have improved  
22 upon past work.

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

25 ACTING PRESIDENT FLANAGAN:

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1 Senator Nozzolio, will you continue to yield?

2 SENATOR NOZZOLIO: Yes,

3 Mr. President.

4 ACTING PRESIDENT FLANAGAN:

5 Senator Gianaris.

6 SENATOR GIANARIS: How many  
7 districts in the plan before us deviate by more  
8 than 4 percent from the mean?

9 SENATOR NOZZOLIO: Mr. President,  
10 I don't have that number in front of me. I'd be  
11 glad to provide it to Senator Gianaris in the  
12 future.

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

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

17 SENATOR NOZZOLIO: Yes,  
18 Mr. President.

19 SENATOR GIANARIS: I'd be happy to  
20 provide him with that number. The answer is 23.  
21 Twenty-three. More than one-third of the Senate  
22 districts deviate from the mean by more than  
23 4 percent. Compared to the map that we're living  
24 under today, which has only seven districts  
25 deviating from that mean by more than 4 percent.

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1 Which brings me back to my original  
2 point. My question to the sponsor is, does it  
3 not disturb him -- never mind the total

4 deviation, which went from 9.7 to 8.8. But does  
5 it not disturb him that we're not measuring one  
6 district against another, we're measuring all 62  
7 or 63 districts against what the numbers should  
8 be?

9                   And we have escalated that number  
10 to historic proportions, historic proportions.  
11 The number of our districts that deviate from the  
12 mean number by more than 4 percent is the highest  
13 it has ever been in recorded history. Does that  
14 not disturb the sponsor? Does that not make this  
15 plan unfair?

16                   SENATOR NOZZOLIO: Mr. President,  
17 that the districts proposed are well within the  
18 standard deviations required by the courts. The  
19 districts proposed improve the standard-deviation  
20 record of those districts currently held in the  
21 New York State Senate.

22                   The plan proposed today has a  
23 standard deviation of 8.80 percent. That  
24 deviation is a 10 percent improvement over the  
25 9.78 percent standard deviation accepted by the

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1 courts 10 years ago.

2                   SENATOR GIANARIS: If the sponsor  
3 would continue to yield, Mr. President.

4                   ACTING PRESIDENT FLANAGAN:  
5 Senator Nozzolio, will you continue to yield?

6                   SENATOR NOZZOLIO: Yes,  
7 Mr. President.

8                   SENATOR GIANARIS: I'd like to  
9 attempt to get my question answered in a way that

10 maybe provides a bit of focus and example for  
11 everyone listening.

12                   Can the sponsor tell me what is the  
13 population of the 10 districts that have the most  
14 white population by race in this plan? And I'll  
15 be happy to provide the answer if he doesn't have  
16 it available.

17                   SENATOR NOZZOLIO: That those --

18                   ACTING PRESIDENT FLANAGAN:

19 Excuse me. Senator Gianaris, are you asking him  
20 a question or are you -- you just said you're  
21 going to provide that information?

22                   SENATOR GIANARIS: Well, in my  
23 previous questions he's not had the answer  
24 available. I happen to have the answer here. So  
25 I was hoping to have him give me the answer as he

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1 understands it to see if it conforms to my  
2 numbers. But I'll be happy to provide it if he  
3 doesn't have it.

4                   SENATOR NOZZOLIO: If I may,  
5 Mr. President. I couldn't determine what Senator  
6 Gianaris's question is. Could he please repeat  
7 it?

8                   SENATOR GIANARIS: I'll be happy  
9 to.

10                   If we take a ranking of the  
11 districts by racial component and we take the  
12 10 districts that have the highest white  
13 population in them and add up the total  
14 population of those districts in this plan, what

15 is that number?

16                   SENATOR NOZZOLIO: It would take  
17 me a number of minutes, Mr. President, to go  
18 through the books that were provided to our  
19 members. That these books have that information  
20 in them, and Senator Gianaris is welcome to  
21 review them, that data.

22                   That is part of the submissions put  
23 forward by LATFOR, and that I'm sure that  
24 question can be answered with a simple calculator  
25 and some mathematical time to review them.

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1                   SENATOR GIANARIS: Mr. President,  
2 if the sponsor would continue to yield.

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

5                   SENATOR NOZZOLIO: Yes,  
6 Mr. President.

7                   SENATOR GIANARIS: I have in fact  
8 done those calculations, so let me cut to the  
9 chase of my question.

10                   It turns out that the 10 most white  
11 districts in this plan have a population of  
12 2,924,968. By contrast, the nine most  
13 African-American districts in this plan have a  
14 population of 2,864,372. Those numbers are  
15 roughly equal. There's a difference of 2 percent  
16 between them.

17                   Does it not disturb not just the  
18 sponsor but this entire majority that this plan  
19 says that African-American communities are  
20 deserving of only nine Senators for every ten

21 Senators that the white communities in this state  
22 have? Is that not shameful to the sponsor?

23                   SENATOR NOZZOLI O: Mr. President,  
24 that I'm very proud of the fact that this body  
25 has continued to support the establishment of

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1 minority-majority districts. I already mentioned  
2 10 years ago when this body established a  
3 Hispanic district in Queens.

4                   The 13 minority State Senate  
5 districts, of those 13, five had a population of  
6 less than 50 percent. That LATFOR and this  
7 Senate have taken a very proactive role in  
8 restoring and protecting and preserving those  
9 minority districts. The five of which, because  
10 of shifting population in the City of New York,  
11 had considerable concern falling below the  
12 50 percent minority, and that we've restored,  
13 protected, and preserved those districts. That's  
14 the focus of LATFOR, and that I'm very proud of  
15 that focus.

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

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

20                   SENATOR NOZZOLI O: Yes,  
21 Mr. President.

22                   ACTING PRESIDENT FLANAGAN:  
23 Senator Gianaris.

24                   SENATOR GIANARIS: Is the sponsor  
25 familiar with the term "packing" as it relates to

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1 redistricting?

2 SENATOR NOZZOLIO: Mr. President,

3 I would certainly welcome Senator Gianaris's

4 definition of such term.

5 SENATOR GIANARIS: If the sponsor

6 would continue to yield.

7 ACTING PRESIDENT FLANAGAN:

8 Senator Nozzolio, will you continue to yield?

9 SENATOR NOZZOLIO: Yes,

10 Mr. President.

11 SENATOR GIANARIS: The term

12 "packing" is a notorious and common method of

13 disenfranchisement of minority communities by

14 loading up as many people of color into as few

15 districts as possible to deny them additional

16 representatives.

17 So when the sponsor tells me that

18 they've increased the numbers of people of color

19 in certain districts, that is not something to be

20 applauded when they are already represented by

21 people of color, because what they're doing is

22 denying the surrounding communities the same

23 benefit.

24 And that is made evident by the

25 fact that there's roughly the same number of

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1 people of color represented by nine Senators and

2 the same number of people who are Caucasian

3 represented by 10 Senators. And that is an

4 unprecedented outrage.

5 And that is what packing is, to

6 answer Senator Nozzolio's question. And it is  
7 going on rampantly in the plan that's before us  
8 today.

9                   And when we talk about population  
10 deviation, that is the real effect it's having on  
11 the streets of New York, that you're  
12 disenfranchising communities of color from  
13 Erie County to Suffolk, and everywhere in  
14 between, by making sure that those  
15 communities have higher populations in those  
16 Senate districts than other communities in this  
17 state.

18                   ACTING PRESIDENT FLANAGAN:  
19 Senator Gianaris, are you speaking on the bill or  
20 are you asking Senator Nozzolio to yield to a  
21 question?

22                   SENATOR GIANARIS: I am asking the  
23 Senator to yield to a question, Mr. President.

24                   ACTING PRESIDENT FLANAGAN: Thank  
25 you.

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1                   SENATOR GIANARIS: And the  
2 question is, have you no shame, Senator  
3 Nozzolio? Have you no shame to produce a plan  
4 that disenfranchises so blatantly communities of  
5 color throughout this state?

6                   And please don't give me your  
7 talking points again. I've heard them several  
8 times.

9                   ACTING PRESIDENT FLANAGAN:  
10 Excuse me. Senator Gianaris.

11 SENATOR GIANARIS: Yes, sir.

12 ACTING PRESIDENT FLANAGAN: I

13 would remind everyone in the chamber that the

14 house being in order and having a sense of

15 decorum is really a good thing for everybody.

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

17 Senator Dilan having set the appropriate tone.

18 I would remind you as well that

19 Senator Nozzolio has engaged you and listened to

20 your questions, and he is entitled to answer

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

22 answer them to your liking, he is entitled to

23 answer the questions the way he deems

24 appropriate.

25 SENATOR GIANARIS: I don't

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

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

3 ACTING PRESIDENT FLANAGAN:

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

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

6 reminding you that if he is going to speak to

7 your questions, he is entitled to answer them the

8 way he deems fit.

9 SENATOR GIANARIS: Point taken,

10 Mr. President.

11 SENATOR NOZZOLIO: Thank you,

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

13 Senator Gianaris's question directly.

14 Senator Gianaris should know that I

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

16 plan. Frankly, the question was insulting.

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

25 Senator Gianaris's definition of

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

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

11 SENATOR GIANARIS: Thank you,  
12 Senator Nozzolio.

13 If the sponsor would continue to  
14 yield.

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

17 SENATOR NOZZOLIO: Yes,  
18 Mr. President.

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

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

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

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

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

14                   ACTING PRESIDENT FLANAGAN:  
15 Senator Gianaris.

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

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

20                   SENATOR NOZZOLIO: Yes,  
21 Mr. President.

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

25                   Regardless of whether the sponsor

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1 stipulates to it or not, I'd ask the question as  
Page 57

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

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

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

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

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

24           SENATOR NOZZOLIO: Yes,  
25 Mr. President.

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1           ACTING PRESIDENT FLANAGAN:  
2 Senator Gianaris.

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

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

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

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

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

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

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

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1 SENATOR NOZZOLIO: Yes,  
2 Mr. President.

3 ACTING PRESIDENT FLANAGAN:  
4 Senator Gianaris.

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

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

12 SENATOR GIANARIS: If the sponsor  
Page 59

13 would continue to yield, Mr. President.

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

16 ACTING PRESIDENT FLANAGAN:  
17 Senator Nozzolio.

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

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

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

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

8 SENATOR NOZZOLIO: Yes,  
9 Mr. President.

10 ACTING PRESIDENT FLANAGAN:  
11 Senator Gianaris.

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

18 and how it was applied in this plan.

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

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

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

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

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

10 SENATOR NOZZOLIO: Yes,  
11 Mr. President.

12 ACTING PRESIDENT FLANAGAN:  
13 Senator Gianaris.

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

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

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

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

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

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

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

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

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

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

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

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

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

12                  SENATOR NOZZOLIO: Yes,  
13 Mr. President.

14                  ACTING PRESIDENT FLANAGAN:  
15 Senator Gianaris.

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

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

♀  
1 say "This is the answer."

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

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

9 Nozzol i o?

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

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

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

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

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

6 ACTING PRESIDENT FLANAGAN:  
7 Senator Nozzol i o, will you continue to yield?

8 SENATOR NOZZOLIO: Yes,  
9 Mr. President.

10 ACTING PRESIDENT FLANAGAN:  
11 Senator Gi anari s.

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

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

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

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

25 SENATOR GIANARIS: If the sponsor

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1 would continue to yield, Mr. President.

2 ACTING PRESIDENT FLANAGAN:

3 Senator Nozzolio, will you continue to yield?

4 SENATOR NOZZOLIO: Yes,

5 Mr. President.

6 ACTING PRESIDENT FLANAGAN:

7 Senator Gianaris.

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

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

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

18 ACTING PRESIDENT FLANAGAN:

19 Senator Nozzolio, will you continue to yield?

20 SENATOR NOZZOLIO: Yes,  
21 Mr. President.

22 ACTING PRESIDENT FLANAGAN:  
23 Senator Gianaris.

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

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

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

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

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

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

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

21 SENATOR NOZZOLIO: Yes,  
22 Mr. President.

23 ACTING PRESIDENT FLANAGAN:  
24 Senator Gianaris.

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25 SENATOR GIANARIS: Is the sponsor

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

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

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

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

13 ACTING PRESIDENT FLANAGAN:  
14 Senator Gianaris on the bill.

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

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

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

5 Nassau County.

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

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

25                   The fact that we're debating such

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

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

10 we're proposing, in history. We're sitting here  
11 increasing the size of the Senate, placing a new  
12 district that is uncalled-for in a part of the  
13 state that has not experienced the highest  
14 growth. It is an exercise in cynicism the likes  
15 of which I haven't seen in 12 years in the State  
16 Legislature.

17                   There's been talk about a new era  
18 in Albany, how well things are functioning.  
19 Well, so much for change coming to Albany, as we  
20 sit here today in the middle of the night in the  
21 middle of Sunshine Week talking about a blatantly  
22 illegal plan that disenfranchises millions of  
23 New Yorkers.

24                   It's fun to be petty with these  
25 lines, it's fun to make jokes about them. And I

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84

1 know the sponsor made reference to the previous  
2 plan, the originally proposed plan on  
3 January 26th and the second plan and how I might  
4 like one better than the other. The fact is  
5 these two plans are virtually identical. If you  
6 look at the number of census blocks actually  
7 changed from one plan to another, it was more  
8 than 98 percent exactly the same.

9                   And I know what the sponsor was  
10 referring to, about where I live and what my  
11 district was going to be. But as far as I'm  
12 concerned, you can take the second plan, put it  
13 together with the first plan, and shove it, the  
14 both of them.

15                   Thank you, Mr. President.

16 ACTING PRESIDENT FLANAGAN:

17 Senator Rivera.

18 SENATOR RIVERA: Thank you so

19 much, Mr. President. If the sponsor would yield

20 for a few questions.

21 SENATOR NOZZOLIO: Yes,

22 Mr. President.

23 ACTING PRESIDENT FLANAGAN:

24 Senator Nozzolio, will you yield?

25 SENATOR NOZZOLIO: Yes,

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1 Mr. President.

2 ACTING PRESIDENT FLANAGAN:

3 Senator Rivera.

4 SENATOR RIVERA: Thank you so

5 much, Mr. President.

6 I have a couple of questions that

7 are actually following up on a couple of things

8 that my colleague brought up. Particularly I'm

9 concerned about issues of minority populations

10 across the State of New York and how they are

11 represented or misrepresented in this plan.

12 Senator Nozzolio -- through you,

13 Mr. President -- can you tell me the district

14 that has the most individuals in the state in

15 this proposal?

16 SENATOR NOZZOLIO: Individuals

17 that the district --

18 SENATOR RIVERA: Mr. President,

19 through you, I'll restate the question. Can you

20 tell me in this current proposal, plan, what is

21 the district that has the most population?

22 SENATOR NOZZOLIO: The most  
23 population? It will take a minute, Senator.

24 A district in Queens appeared to  
25 have the most population.

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1 SENATOR RIVERA: Through you,  
2 Mr. President, if the sponsor would continue to  
3 yield.

4 ACTING PRESIDENT FLANAGAN:  
5 Senator Nozzolio, will you continue to yield?

6 SENATOR NOZZOLIO: Yes,  
7 Mr. President.

8 ACTING PRESIDENT FLANAGAN:  
9 Senator Rivera.

10 SENATOR RIVERA: Thank you,  
11 Mr. President.

12 Yes, there is actually -- my  
13 colleague Senator Peralta, currently who  
14 represents the 13th District, has about 319,115,  
15 according to the numbers, the LATFOR numbers.

16 Can you tell me the racial  
17 breakdown of that district?

18 SENATOR NOZZOLIO: Which -- that's  
19 the Senate District 13, Senator Rivera?

20 SENATOR RIVERA: Mr. President,  
21 through you. Indeed it is, Senator Nozzolio.

22 SENATOR NOZZOLIO: As I said in my  
23 remarks, that SD 13 was created 10 years ago as a  
24 Hispanic district by this Senate. That we're  
25 very pleased it is a majority-minority district.

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1 And that your -- you asked for the Hi spani c  
2 popul ati on in that di stri ct?

3 SENATOR RIVERA: Through you,  
4 Mr. Presi dent --

5 SENATOR NOZZOLI O: Excuse me,  
6 Mr. Presi dent. Cou ld Sena tor Ri vera be preci se  
7 in hi s questi on?

8 ACTING PRESIDENT FLANAGAN:  
9 Sena tor Ri vera.

10 SENATOR RIVERA: Through you,  
11 Mr. Presi dent, I absol utel y can.

12 Cou ld you gi ve me the raci al  
13 breakdown -- not just Latino voters, but the  
14 raci al breakdown of who li ves in that di stri ct?

15 SENATOR NOZZOLI O: That the  
16 Hi spani c popul ati on is 60.8 percent of thi s  
17 di stri ct. The non-Hi spani c popul ati on is  
18 39.2 percent. The non-Hi spani c whi te popul ati on  
19 is 14.3 percent, the non-Hi spani c black  
20 popul ati on is 6.6 percent. The non-Hi spani c  
21 Asi an popul ati on is 16.2 percent. The Hawai ian  
22 popul ati on is zero. The "other" is li sted as  
23 0.6 percent.

24 And I may add, Sena tor Ri vera can  
25 have the answers to any of those questi ons ei ther

♀  
1 in the book presented that provi des thi s analysi s  
2 for every proposed Sena te and Assem bly di stri ct  
3 in thi s plan.

4 SENATOR RIVERA: Through you,  
5 Mr. Presi dent, if the spon sor wi ll conti nue to

6 yield.

7 ACTING PRESIDENT FLANAGAN:

8 Senator Nozzolio, will you continue to yield?

9 SENATOR NOZZOLIO: Yes,

10 Mr. President.

11 ACTING PRESIDENT FLANAGAN:

12 Senator Rivera.

13 SENATOR RIVERA: Thank you,

14 Mr. President.

15 It is precisely -- these are -- I

16 just want to make sure that we have the same

17 numbers. And that is the numbers that I'm

18 talking about, I got them precisely from the

19 documents that you referred to.

20 The 13th District does have about

21 319,000 individuals that make up the population.

22 About 84 percent of them are people of color.

23 Can you tell me what district,

24 Senator Nozzolio -- through you, Mr. President --

25 that has the least individuals in the state and

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1 how many those are?

2 ACTING PRESIDENT FLANAGAN:

3 Senator Rivera, if I may, I frankly had

4 difficulty hearing the latter part of your

5 question.

6 SENATOR NOZZOLIO: I didn't

7 either.

8 ACTING PRESIDENT FLANAGAN: If you

9 could repeat that, please.

10 SENATOR RIVERA: Absolutely,

11 Mr. President. Apologies.

12 Through you. Senator Nozzolio,  
13 could you tell me the district that has the least  
14 amount of population and the racial breakdown of  
15 said district? Again, just to confirm that I  
16 have the correct numbers.

17 SENATOR NOZZOLIO: I'm advised,  
18 Mr. President, that the district that has the  
19 least amount of population is the proposed  
20 57th senatorial district. That it is listed as  
21 292,000 people.

22 It is also about the size of the  
23 states of Connecticut, Rhode Island, maybe even  
24 Massachusetts combined. It's one of the largest  
25 districts in the state. It extends from the

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1 Pennsylvania border well across the Southern Tier  
2 in the further western part of the state.

3 SENATOR RIVERA: Mr. President,  
4 through you, if the sponsor would continue to  
5 yield.

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

8 SENATOR NOZZOLIO: I'd be happy to  
9 yield, Mr. President.

10 ACTING PRESIDENT FLANAGAN:  
11 Senator Rivera.

12 SENATOR RIVERA: Thank you,  
13 Mr. President.

14 You are correct, it is the 57th  
15 district. It has about 292,000 individuals. And  
16 unless I am mistaken, there is no requirement as

17 far as area that a district needs to cover as far  
18 as constitutional requirements that -- if I am  
19 incorrect, please correct me.

20 But actually what I have a question  
21 for you is, how did LATFOR decide which districts  
22 would have larger populations and which would  
23 have lower ones? How did you come to that  
24 decision? Through you, Mr. President.

25 ACTING PRESIDENT FLANAGAN:

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1 Senator Nozzolio.

2 SENATOR NOZZOLIO: Mr. President,  
3 the compliance in each of the districts presented  
4 today must comply fully in regard to the United  
5 States Constitution, the Constitution of the  
6 State of New York, the federal Voting Rights Act  
7 and other communities of interest, especially  
8 establishing or continuing the cores of existing  
9 districts, maintaining communities of interest,  
10 and other provisions of this nature.

11 That each district also must comply  
12 with issues that are relating to rules that the  
13 Constitution of the State of New York has before  
14 it, of which are the towns cannot be split in the  
15 provision of State Senate and Assembly lines.

16 And that all those factors are  
17 combined in the plan developed.

18 SENATOR RIVERA: Through you,  
19 Mr. President, if the sponsor would continue to  
20 yield.

21 ACTING PRESIDENT FLANAGAN:

22 Senator Nozzolio, will you continue to yield?

23 SENATOR NOZZOLIO: Yes,

24 Mr. President.

25 ACTING PRESIDENT FLANAGAN:

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1 Senator Rivera.

2 SENATOR RIVERA: Thank you,

3 Mr. President.

4 Senator Nozzolio -- through you,

5 Mr. President -- would you agree with the concept

6 that if a district has 320,000 people, say,

7 hypothetically, that an individual voter or an

8 individual resident of that district basically

9 has about 1/320,000th of representation as

10 opposed to a district that has 300,000 people --

11 let me make it clear. Maybe that's not very

12 clear.

13 Basically, if we have a -- in one

14 district we have 320,000 individuals, in the

15 other one we have 300,000. Do you agree with the

16 concept that the people -- that this person over

17 here, in 320,000, one person in that district

18 would basically have 1/320,000th of the entire

19 representation, and this person over here would

20 have 1/300,000th?

21 In other words, would there be

22 unequal representation if one district is larger

23 than the other in this way? Hypothetically.

24 SENATOR NOZZOLIO: Mr. President,

25 the plan proposed today has a standard deviation

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1 of 8.80 percent. That compares with the standard



8 were presented which actually had more districts  
9 that had more minority population represented in  
10 those districts, numerically speaking?

11           SENATOR NOZZOLIO: Mr. President,  
12 looking at the current districts and particularly  
13 the 13 minority districts that exist today as  
14 senatorial districts, it was a great concern to  
15 LATFOR and to members of LATFOR that five of  
16 those 13 districts were under 50 percent  
17 minority-majority population -- in effect, would  
18 lose their minority status if issues were not  
19 dealt with.

20           I indicated before in my comments  
21 that the preservation, protection, and  
22 restoration of those minority districts was a  
23 foremost priority for this plan. That  
24 restoration occurred, and I'm very pleased to say  
25 it occurred in all five districts. And that that

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1 is the focus that this plan had in its mission.

2           SENATOR RIVERA: Through you,  
3 Mr. President, if the sponsor would continue to  
4 yield.

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

7           SENATOR NOZZOLIO: Yes,  
8 Mr. President.

9           ACTING PRESIDENT FLANAGAN:  
10 Senator Rivera.

11           SENATOR RIVERA: Thank you,  
12 Mr. President.

13 I will get back to this issue in a  
14 little bit, particularly when considering the  
15 growth across the state, as you've made very  
16 clear not only here but in the hearing that we  
17 had when I was testifying before you. You made  
18 it very clear, you corrected me that there has  
19 been growth in the population in the State of  
20 New York, but that it was at a lower level than  
21 in other states so there was comparison how many  
22 seats we had in Congress. But you did make clear  
23 that there was growth.

24 And I would like to get, in a  
25 little bit, back to where that growth actually

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1 occurred and particularly what populations  
2 actually grew. But we'll get back to that.

3 I want to actually bring you back  
4 to the hearing that we actually held in Albany  
5 where I testified before you. Do you remember  
6 when you referred particularly to my district and  
7 you said to me, when we were talking about the  
8 percentage of white population that is in my  
9 current district and the one that was proposed  
10 that we were discussing at the time, and when  
11 you -- do you remember when you told me that I  
12 should be happier, that I should be happy with  
13 the fact that the population was 11 percent white  
14 at one point, and then it went down to 2 percent,  
15 so it would make it easier for me to be elected,  
16 therefore I should be happy that that was what  
17 you had done?

18 SENATOR NOZZOLI: Mr. President,  
Page 79

19 I'm sorry, I tried my best to follow Senator  
20 Rivera. Could he repeat that question or put it  
21 in the form of a question?

22 SENATOR RIVERA: Absolutely,  
23 Mr. President. Through you.

24 Senator Nozzolio -- through you,  
25 Mr. President -- in the hearing that we held in

♀ 97

1 Albany when we were discussing -- after I gave my  
2 testimony and a series of questions and answers  
3 ensued from you to me and from me to you, you  
4 specifically asked me questions about the  
5 33rd District, currently the one that I represent  
6 before this -- whatever proposal is accepted. It  
7 has about 11 percent population that is white,  
8 non-Latino, and the proposed plan has about  
9 2 percent. It has changed a little bit since  
10 then, but at that time you told me that wouldn't  
11 I be happier that I had more Latinos, therefore  
12 it would be easier for me to get elected.

13 I just wanted to see if you  
14 remembered that we had that conversation.  
15 Through you, Mr. President.

16 SENATOR NOZZOLIO: Mr. President,  
17 I have no recollection of that conversation with  
18 Senator Rivera.

19 SENATOR RIVERA: Through you,  
20 Mr. President, if the sponsor would continue to  
21 yield.

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

24 SENATOR NOZZOLI O: Yes,  
25 Mr. President.

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1 ACTING PRESIDENT FLANAGAN:  
2 Senator Rivera.  
3 SENATOR RIVERA: Thank you so  
4 much, Mr. President.  
5 I would refer you back to the --  
6 actually, the conversation is on the record. But  
7 I wanted to bring it up only because it refers a  
8 little bit to the issue that my colleague Senator  
9 Gianaris brought up as far as how many -- what  
10 the population is of a particular district and  
11 whether, in this case, if it makes it easier  
12 perhaps for me to get elected or harder for me to  
13 get elected.

14 I think that I would want minority  
15 communities to be given the opportunity to elect  
16 more representatives of their own choosing. So I  
17 wanted to kind of make sure that we remembered  
18 that we had that conversation.

19 But I did have a question as far as  
20 packing and cracking as well, which I'll get to  
21 in a second. When it comes to redistricting and  
22 the issue of packing minorities -- well, I'll  
23 wait until Senator Nozzolio finishes talking to  
24 the attorney.

25 SENATOR NOZZOLI O: Mr. President.

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1 SENATOR RIVERA: I just wanted to  
2 make sure that --

3 SENATOR NOZZOLI O: Did you finish  
Page 81

4 your question or is it --

5                   SENATOR RIVERA: No, I haven't. I  
6 just wanted to make sure that you were finished  
7 with your conversation.

8                   SENATOR NOZZOLIO: Let me know  
9 when it's finished.

10                  SENATOR RIVERA: Thank you,  
11 Mr. President.

12                  So on the issue of packing and  
13 cracking as it refers to the districts that you  
14 have in this current plan, would you agree or  
15 disagree with the notion that taking districts  
16 that were already majority-minority populations  
17 and then actually taking that percentage up  
18 actually makes it -- actually are cases of  
19 packing, and that indeed it actually takes  
20 certain populations and disenfranchises them by  
21 making it less likely that they would be  
22 populations in other districts where they could  
23 elect someone of their own choosing?

24                  Through you, Mr. President.

25                  SENATOR NOZZOLIO: Mr. President,

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100

1 Senator Rivera's district, the 33rd District  
2 proposed under this plan, maintained the core of  
3 its existing district at over 72 percent.  
4 72.5 percent of Senator Rivera's district is the  
5 same under this plan as it was in the current  
6 district that he now represents. That the  
7 Hispanic population went from 65.2 percent to  
8 67 percent.

9 That -- I'm not sure exactly what  
10 Senator Rivera's question is trying to get at.  
11 But the fact of the matter is --

12 SENATOR RIVERA: Mr. President,  
13 I'll clarify if necessary.

14 SENATOR NOZZOLIO: The fact of the  
15 matter is adding 1 or 2 percent of Hispanic  
16 population to Senator Rivera's district ensures  
17 that there will be no retrogression.

18 That that is another important  
19 component of the Voting Rights Act. That if the  
20 district went down 2 percent, or 1.8 percent, as  
21 what occurred here, of Hispanic population, I  
22 don't know if Senator Rivera would think that  
23 would be a good thing.

24 I'm concerned, though, that  
25 certainly as this has -- the Hispanic population

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1 has risen 1.8 percent in Senator Rivera's  
2 district, I don't believe by preserving the core  
3 of existing districts, enhancing a small amount,  
4 percentage of Hispanic district ensures the  
5 integrity of that minority-majority district.

6 SENATOR RIVERA: Through you,  
7 Mr. President, if the sponsor would continue to  
8 yield.

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

11 SENATOR NOZZOLIO: Yes,  
12 Mr. President.

13 ACTING PRESIDENT FLANAGAN:  
14 Senator Rivera.

15 SENATOR RIVERA: Thank you,  
16 Mr. President.  
17 Senator Nozzolio -- through you,  
18 Mr. President -- I was referring to the prior  
19 plan, the original draft that actually changed  
20 from 11 percent white population to 2 percent  
21 white population. And I was referring to the  
22 comment that you made, particularly because I  
23 wanted to see what you thought that -- whether  
24 that was cracking or packing or not.

25 But I actually have another

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1 question that refers to something that you just  
2 brought up, which is retrogression.

3 First of all, can you tell me the  
4 two sections of the Voting Rights Act that  
5 specifically protect the rights of minority  
6 communities from being disenfranchised, that  
7 protects them from being disenfranchised?

8 SENATOR NOZZOLIO: Mr. President,  
9 I'm very pleased that Senator Rivera believes the  
10 plan we put forward is improved upon.

11 And that I believe he's asking for  
12 citations in the federal Voting Rights Act.  
13 There are two sections, Section 2 and Section 5  
14 of the --

15 ACTING PRESIDENT FLANAGAN: Excuse  
16 me, Senator Nozzolio.

17 It's starting to get a little hard  
18 to hear our speakers. If we can just have some  
19 quiet in the house, that would be helpful.

20 Senator Nozzol i o.

21 SENATOR NOZZOLI O: Thank you,

22 Mr. Presi dent.

23 Again, I et me rei terate I 'm very  
24 pleased that Senator Ri vera appreciates the  
25 improvement in his di strict from the prior plan

‡

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1 to thi s plan.

2 And that there are two sections of  
3 the federal Voting Ri ghts Act that are appl icabl e  
4 in these di scussi ons of mi nori ty di stricts.

5 Those are Secti on 2 and Secti on 5.

6 SENATOR RIVERA: Through you,  
7 Mr. Presi dent, i f the sponsor woul d conti nue to  
8 yi el d.

9 ACTING PRESIDENT FLANAGAN:  
10 Senator Nozzol i o, wi ll you conti nue to yi el d?

11 SENATOR NOZZOLI O: Yes,  
12 Mr. Presi dent.

13 ACTING PRESIDENT FLANAGAN:  
14 Senator Ri vera.

15 SENATOR RIVERA: Thank you,  
16 Mr. Presi dent.

17 So referring to Secti ons 2 and 5,  
18 the next series of questi ons has to do wi th these  
19 two secti ons. In parti cul ar, to talk about the  
20 Bronx for a second, when we're talki ng about the  
21 popul ation of Latino voters in the Bronx, i t  
22 actual ly was about 11.5 percent growth in the  
23 Bronx.

24 And yet in the Bronx there's sti ll  
25 only four di stricts -- between the Bronx and

1 Upper Manhattan there's only four districts where  
2 Latinos might be arguably able to elect a Senator  
3 of their choice. Can you tell me why it remained  
4 at four and it didn't go up even with that  
5 population growth?

6           SENATOR NOZZOLIO: Mr. President,  
7 this plan proffered is in full compliance with  
8 the federal Voting Rights Act, both Section 2 and  
9 Section 5. And that we believe that the  
10 enhancements of those Hispanic population  
11 districts -- or the Hispanic population within  
12 individual districts ensures the integrity of  
13 those districts, ensures that there will be no  
14 retrogression in these districts over the next  
15 decade, and continues the maintenance and  
16 preservation of those Voting Rights Act minority  
17 districts.

18           SENATOR RIVERA: Through you,  
19 Mr. President, if the sponsor would continue to  
20 yield.

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

23           SENATOR NOZZOLIO: Yes,  
24 Mr. President.

25           ACTING PRESIDENT FLANAGAN:

1 Senator Rivera.

2           SENATOR RIVERA: Thank you,  
3 Mr. President.

4           So only for the sake of argument,

5 because I agree with the arguments that my  
6 colleague Senator Gianaris stated on the floor  
7 about the issue of the 63rd seat -- I don't think  
8 that is constitutional, but that was discussed  
9 before. For the sake of argument, let's say that  
10 there should be 63 seats, only for the sake of  
11 argument. Are you familiar with the -- once the  
12 decision was made by LATFOR and it was made  
13 public that there would be 63 seats as opposed to  
14 62 in a plan, there were actually draft plans  
15 that were put together by other organizations,  
16 like the Unity Plan update, Common Cause,  
17 et cetera.

18                   In that plan they actually  
19 demonstrated that if New York City were given  
20 fair apportionment as it refers to the rest of  
21 the state, particularly related to its growth or  
22 the growth of population, you could actually  
23 take -- you would take a pair of  
24 Bronx/Westchester districts that would be created  
25 and it would be possible to create five districts

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1 in this area, in the area of the Bronx and  
2 Upper Manhattan, where Latinos would have the  
3 political power to be able to elect someone of  
4 their own choosing, particularly referring to the  
5 growth that was obvious there.

6                   So the question is the following.  
7 Seeing that there were these plans that were put  
8 out there that clearly demonstrate that based on  
9 this growth and based on the -- only for the sake  
10 of argument, that there should be 63 seats --

11 that five would be available that would be  
12 possible in the Bronx, considering the growth of  
13 the Latino population there, what was the choice  
14 made by LATFOR to actually not create these types  
15 of districts?

16                   SENATOR NOZZOLIO: Mr. President,  
17 those districts that have been proffered under  
18 this plan are in full compliance with the federal  
19 Voting Rights Act, the U.S. Constitution and the  
20 State Constitution. They preserve the cores of  
21 existing districts, that was a priority, as it  
22 was a priority to ensure that there be no  
23 retrogression in any of the minority districts in  
24 the Bronx or any of the other boroughs of  
25 New York City.

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1                   SENATOR RIVERA: Through you,  
2 Mr. President, if the sponsor would continue to  
3 yield.

4                   ACTING PRESIDENT FLANAGAN:  
5 Senator Nozzolio, will you continue to yield?

6                   SENATOR NOZZOLIO: Yes,  
7 Mr. President.

8                   ACTING PRESIDENT FLANAGAN:  
9 Senator Rivera.

10                   SENATOR RIVERA: Thank you,  
11 Mr. President.

12                   That doesn't really answer the  
13 question, but okay. Let's actually dig a little  
14 bit deeper into the growth of these populations.

15                   Are you familiar, Senator

16 Nozzolio -- through you, Mr. President -- with  
17 the breakdown of the largest ethnic groups, the  
18 largest Latino ethnic groups in the Bronx,  
19 particularly the ones that grew?

20 SENATOR NOZZOLIO: Your question?  
21 Mr. President, Senator Rivera's  
22 question, could he please ask it, state it as a  
23 question.

24 SENATOR RIVERA: Absolutely.  
25 Through you, Mr. President. In the

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1 Bronx are you familiar with the largest ethnic  
2 groups, largest Latino ethnic groups in the  
3 Bronx, particularly as it relates to the growth  
4 in the last 10 years for the census numbers?

5 SENATOR NOZZOLIO: Mr. President,  
6 I am familiar with the census data as it is  
7 presented. And that data is part of the official  
8 record that accompanies the proposed plan.

9 SENATOR RIVERA: Through you,  
10 Mr. President, if the sponsor would continue to  
11 yield.

12 ACTING PRESIDENT FLANAGAN:  
13 Senator Nozzolio, do you continue to yield?

14 SENATOR NOZZOLIO: Yes,  
15 Mr. President.

16 ACTING PRESIDENT FLANAGAN:  
17 Senator Rivera.

18 SENATOR RIVERA: Thank you,  
19 Mr. President.

20 It's all right to say if you don't  
21 know them off the top of your head. It sounds

22 good to say it.

23                   There's three of them. There's  
24 Puerto Ricans, there's Dominicans, and there's  
25 Mexicans. And of those folks, of those ethnic

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1 groups, are you familiar with the citizenship  
2 status of these different Latino groups?

3                   Through you, Mr. President.

4                   SENATOR NOZZOLIO: Mr. President,  
5 the information provided by the United States  
6 Census Bureau accompanied this proposal, and each  
7 of the districts has accompanying with it that  
8 accompanying data.

9                   If Senator Rivera wants to make a  
10 point, I'd be glad to make it. This is not meant  
11 to be a rhetorical exercise. If he has a point,  
12 please make it.

13                   SENATOR RIVERA: Through you,  
14 Mr. President, if the sponsor would continue to  
15 yield.

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

18                   SENATOR NOZZOLIO: Yes,  
19 Mr. President.

20                   ACTING PRESIDENT FLANAGAN:  
21 Senator Rivera.

22                   SENATOR RIVERA: Thank you,  
23 Mr. President.

24                   There most certainly is a point,  
25 and it is the following. Of those Latino

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1 popul ations, Puerto Ri cans, Domi ni cans and  
2 Mexi cans -- and I will ask a questi on at the end  
3 of thi s, before I speak on the bill -- Puerto  
4 Ri cans are actual ly ci ti zens by bi rth, as opposed  
5 to Mexi cans and Domi ni cans that were born outsi de  
6 of the coun try. So obvi ously there is an issue  
7 of voti ng-age popul ations.

8 I will wait.

9 So there is an issue of voti ng-age  
10 popul ations. Puerto Ri cans, regardl ess of where  
11 they were born, if they were born in the isl and  
12 of Puerto Rico or here in the Uni ted States, are  
13 ci ti zens. While somebody, for exam ple, who was  
14 born in Mexi co and then comes to the Uni ted  
15 States and becom es a ci ti zen, that has to be a  
16 process of becomi ng a ci ti zen. They were not  
17 Ameri can ci ti zens when they were born.

18 Therefore, there's issues of  
19 voti ng-age popul ations in the di fferent di stri cts  
20 that we're talki ng about. And I wanted  
21 parti cular ly to speak about the di strict that  
22 woul d incl ude the Domi ni can-Ameri can communi ty in  
23 Washi ngton Hei ghts, where they're still a very  
24 large proporti on of nonci ti zens.

25 So are you aware that the di strict

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1 that is there now, are you aware of the breakdown  
2 of ci ti zen voti ng-age popul ations that exists in  
3 that di strict?

4 ACTING PRESIDENT FLANAGAN: Excuse  
5 me. Senator Nozzolio, before you answer the  
6 questi on, a lot of members have come back into

7 the chamber. Senator Nozzolio -- it's a little  
8 hard for him to hear the questions and be able to  
9 properly respond. We just need some quiet in the  
10 house.

11 Senator Nozzolio.

12 SENATOR NOZZOLIO: Thank you,  
13 Mr. President.

14 Mr. President, this plan uses as  
15 its foundation the data from the United States  
16 Census Bureau. That it was discussed already, I  
17 will discuss it again, that the plan is well  
18 within the acceptable and approvable standards  
19 established by the United States Constitution,  
20 the federal Voting Rights Act, and the  
21 Constitution of the State of New York and all  
22 other applicable statutes and all other  
23 applicable case law and judicial precedents.

24 That the data from the United  
25 States Census Bureau accompanies each and every

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1 one of the districts that are part of this plan.  
2 And that Senator Rivera and any other Senator or  
3 any other citizen can review that data at their  
4 leisure. That the data accompanies each  
5 district, and the data I believe speaks for  
6 itself.

7 SENATOR RIVERA: Through you,  
8 Mr. President, if the sponsor would continue to  
9 yield.

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

12 SENATOR NOZZOLI: Yes,  
13 Mr. President.  
14 ACTING PRESIDENT FLANAGAN:  
15 Senator Rivera.  
16 SENATOR RIVERA: Thank you so  
17 much, Mr. President.  
18 I know time is growing short, and I  
19 did want to get to a couple more points before  
20 closing.

21 On the issue of voting-age  
22 population, the reason I mention that is  
23 specifically because if you can demonstrate that  
24 you can draw a district that actually maintains a  
25 certain voting-age population by maintaining the

♀  
1 63 seats, et cetera -- yet LATFOR made a choice  
2 to actually take a smaller voting-age  
3 population. It actually could -- you could argue  
4 that there is retrogression in different  
5 districts, and I was going to make the case --  
6 when I speak on the bill briefly, I will make the  
7 case on the district that that refers to.

8 But I want to actually talk a  
9 little bit about Long Island before we get the  
10 proverbial hook and they pull me and tell me that  
11 I'm running out of time. I want to talk a little  
12 bit about Long Island and particularly the  
13 communities out there in Suffolk and in Nassau  
14 and the different -- the growth of population out  
15 there and how the villages or different townships  
16 and different administrative subunits, if you  
17 will, how they're divided up, and particularly

18 how the populations in them are represented or  
19 not represented or don't have an opportunity to  
20 elect someone of their own choosing.

21           Let's talk a little bit about  
22 Nassau. Do you know the population, when you're  
23 talking about Latino, Asian-American and  
24 African-American communities, how much they have  
25 grown in Nassau County in the last 10 years in

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1 the census?

2           SENATOR NOZZOLIO: Mr. President,  
3 the data in regard to each district is  
4 accompanying the proposal. That any type of  
5 numbers that Senator Rivera would like to have  
6 are right within this proposal, and it  
7 accompanies the legislation.

8           SENATOR RIVERA: Through you,  
9 Mr. President, if the sponsor would continue to  
10 yield.

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

13           SENATOR NOZZOLIO: Yes,  
14 Mr. President.

15           ACTING PRESIDENT FLANAGAN:  
16 Senator Rivera.

17           SENATOR RIVERA: Thank you so  
18 much, Mr. President.

19           Again, just to confirm that the  
20 numbers that I have are the ones that you have,  
21 Senator Nozzolio.

22           The 2010 census reports that Nassau

23 County's Hispanic population grew by 47 percent  
24 since 2000, the African-American population  
25 increased by 9 percent, and the Asian-American

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1 community grew by 62 percent. So you had all of  
2 these minority populations that grew at very  
3 large rates in different parts of Nassau County.

4           And there is actually an argument  
5 that was made, when you held a hearing out there,  
6 about different communities that should be kept  
7 together, communities of interest that should be  
8 kept together.

9           So I wanted to ask specifically  
10 about what the -- and by the way, these analyses  
11 come from certainly experts that know a lot more  
12 about this than I do, and who are experts on  
13 Long Island, who tell me that the communities of  
14 Elmont, South Floral Park, North Valley Stream,  
15 Valley Stream, Lakewood, Hempstead Village,  
16 Uniondale, Roosevelt, Freeport, Carle Place and  
17 Westbury are actually kind of a continuous and  
18 cohesive community.

19           So I wanted to see if you agree  
20 that that was the case -- and this, again, is  
21 coming from folks that know much more about  
22 Long Island than I do. They would argue that all  
23 of this makes for a cohesive community of  
24 interest even though it is a lot of small  
25 villages and towns. Would you agree that that

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1 is -- that that would constitute a community of  
2 interest?

3                   SENATOR NOZZOLIO:   Mr. President,  
4 over the last decade Long Island has engaged in a  
5 relatively stable population. That the plan  
6 presented preserves the cores of existing  
7 districts, that it preserves the communities of  
8 interest, and that that preservation is the  
9 preservation that is required and accepted by the  
10 state constitution and the federal constitution.

11                   SENATOR RIVERA:   Through you,  
12 Mr. President, if the sponsor would continue to  
13 yield.

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

16                   SENATOR NOZZOLIO:   Yes,  
17 Mr. President.

18                   ACTING PRESIDENT FLANAGAN:  
19 Senator Rivera.

20                   SENATOR RIVERA:   Thank you,  
21 Mr. President. Through you.

22                   Senator Nozzolio, would you agree  
23 that in Suffolk County -- we're talking about the  
24 town of Babylon, the town of Islip and  
25 Brentwood. And as far as the black and Latino

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1 populations in those parts of Long Island, would  
2 you agree or disagree that these can represent a  
3 community of interest? And, more specifically,  
4 that the growth of population of minority  
5 communities in these towns in this geographical  
6 area -- I'll wait until the . . .

7                   SENATOR NOZZOLIO:   Mr. President.

8 SENATOR RIVERA: I'm sorry,  
9 Mr. President, I have not finished my question.  
10 I will finish it.

11 SENATOR NOZZOLIO: Please finish,  
12 Mr. Rivera.

13 SENATOR RIVERA: Thank you,  
14 Senator Nozzolio.

15 Would you agree that considering  
16 the growth of minority populations in these  
17 towns -- again, the town of Babylon, the town of  
18 Islip and Brentwood -- would you agree or  
19 disagree that the growth of population in these  
20 towns corresponds to a growth in population and  
21 that that population, minority population that  
22 has historically been divided in districts --  
23 some people would argue purposely -- but if these  
24 communities of color are growing, should not  
25 these communities have an opportunity to elect

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1 someone of their own choosing, as per Section 2  
2 and Section 5 of the Voting Rights Act?

3 SENATOR NOZZOLIO: Mr. President,  
4 that the districts that Senator Rivera is  
5 referring to each have had at least 90 percent of  
6 the core of their existing district -- those on  
7 the island, those in Suffolk County in  
8 particular, 90 percent of the cores of existing  
9 districts were retained by this plan.

10 That is an item that is part of the  
11 redistricting matrix that we particularly are  
12 very proud of, in keeping the cores of existing  
13 districts together. And that those districts in

14 Suffolk County virtually are all preserved to  
15 90 percent capacity as you move further east --  
16 excuse me, west. That that district core is not  
17 under 80 percent moving west.

18                   So the objective, the  
19 constitutionally focused objective, standard  
20 redistricting practices encourage the  
21 preservation of the cores of existing districts,  
22 and that is exactly what this plan did,  
23 particularly on Long Island.

24                   SENATOR RIVERA: Mr. President, on  
25 the bill.

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1                   ACTING PRESIDENT FLANAGAN:

2 Senator Rivera on the bill.

3                   SENATOR RIVERA: Thank you,

4 Mr. President.

5                   Thank you, Senator Nozzolio, for  
6 answering some of these questions.

7                   It is obvious, my colleagues, that  
8 there are some of us that have a serious problem  
9 with this plan. And we actually have a lot of  
10 problems with this plan. I have a very deep and  
11 basic disagreement both with Senator Nozzolio and  
12 with the plan itself, with the idea that it  
13 protects minority communities.

14                   I have a deep -- a deep problem, a  
15 fundamental problem with the idea that  
16 maintaining existing districts, as Senator  
17 Nozzolio insisted over and over again, preserving  
18 existing districts is actually a positive thing

19 when the existing districts have disenfranchised  
20 minority communities historically.

21 If back in 1972 and in '82 and in  
22 '92 and in 2002 districts were drawn specifically  
23 to break up communities of color, to weaken their  
24 voting power, preserving those changes now does  
25 not actually give validity to the idea that this

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1 is a plan that defends communities of color, that  
2 allows them the opportunity to elect someone of  
3 their own interest.

4 These issues happen all over the  
5 state, whether it's out in Long Island -- and I  
6 would say that in the case of all the towns that  
7 I mentioned -- and I will be the first to admit I  
8 don't visit Long Island often. And I know that  
9 there's many of my colleagues who both live out  
10 there, who have family out there, who know much  
11 more about it than I do. But the reason -- and  
12 it is precisely the reason why I mentioned all  
13 the little towns and villages that I mentioned.

14 Because if Elmont, South Floral  
15 Park, North Valley Stream, Valley Stream,  
16 Lakewood, Hempstead Village, Uniondale,  
17 Roosevelt, Freeport, Carle Place and Westbury all  
18 correspond to a series of towns and townships and  
19 villages that have actually had growing  
20 populations, growing minority populations that  
21 are trying to make sure that they can access  
22 government as ways to have government address its  
23 concerns, and you have all of these be split into  
24 four districts, historically making quite sure

25 that the percentage of what these districts are

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1 corresponds to a percentage that means that  
2 whomever is elected in that district can choose  
3 to ignore them, I don't think that's fair.

4                   And if you have an historical  
5 perspective, you will see that it has been done  
6 historically. Preserving that doesn't make it a  
7 fair plan. Preserving that makes it a very  
8 unfair plan, a plan that disenfranchises minority  
9 voters all across the state.

10                   And when I mentioned the Bronx or  
11 Upper Manhattan and we talk about the populations  
12 in there, and we talk about the fact that  
13 organizations that had the same information that  
14 LATFOR did -- they had the same information as  
15 far as demographics, as far as geographies, as  
16 far as communities of interest -- and they could  
17 draw plans, even with what I believe to be a  
18 unconstitutional 63rd seat, that across the state  
19 made it possible for communities of interest to  
20 choose someone to represent them, it shows you  
21 something very clear: that LATFOR has made  
22 choices, has made very clear choices about where  
23 they put these lines, has made very clear choices  
24 about how they disenfranchise and take away power  
25 from communities that could potentially unelect

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1 you.

2                   And I say potentially because,  
3 ladies and gentlemen, my colleagues on the other

4 side of the aisle, you could actually give  
5 yourselves an opportunity to make the case to  
6 these individuals, to these men and women, that  
7 you could represent them well in this body. You  
8 could tell them "You, as minority communities, we  
9 could represent you so well. Give us the  
10 opportunity." You don't do that with this plan.

11           This plan is unfair from top to  
12 bottom. It disenfranchises minority communities  
13 from top to bottom across the state. It takes  
14 power away from people that need it the most. I  
15 think you should be ashamed of it.

16           I'll finish with this, ladies and  
17 gentlemen. I came to this body to take over for  
18 someone whose name I don't mention, and I won't.  
19 But there was a reason I came here. And I came  
20 here because I believed that being in this body  
21 and representing the people of the district that  
22 I represent in the Bronx was incredibly  
23 important. It was incredibly important for me to  
24 come here and make sure that the things that  
25 happen in this state correspond to the best of

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1 our nature.

2           That sounds idealistic and silly,  
3 but it was that idealism and that silliness that  
4 got me to this Senate seat. It is that idealism  
5 and silliness that makes me stand before you  
6 today and say that this plan does not correspond  
7 to the best that we can do. We can do better.  
8 Approving this plan today, considering this plan  
9 is not looking backwards, it is stepping

10 backwards.

11 Mr. President, I will be voting in  
12 the negative on this bill.

13 ACTING PRESIDENT FLANAGAN:

14 Senator DeFrancisco, why do you rise?

15 SENATOR DeFRANCISCO: I would like  
16 to make a motion to extend the session into  
17 tomorrow morning, because we're rapidly  
18 approaching midnight. And since we are making  
19 such progress, we ought to keep going beyond  
20 midnight.

21 ACTING PRESIDENT FLANAGAN:

22 Senator DeFrancisco's motion is before the  
23 house. Those in favor of Senator DeFrancisco's  
24 motion should signify by saying aye.

25 (Response of "Aye.")

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1 ACTING PRESIDENT FLANAGAN: Those  
2 in objection say nay.

3 (Response of "Nay.")

4 ACTING PRESIDENT FLANAGAN: The  
5 motion is accepted.

6 Thank you, Senator DeFrancisco.

7 SENATOR DeFRANCISCO: I have  
8 another motion.

9 In order to give everyone the  
10 opportunity to explain their vote before we get  
11 too far into the following day, I would make a  
12 motion to close the debate on this particular  
13 bill.

14 ACTING PRESIDENT FLANAGAN:

15 Senator DeFrancisco has a motion before the  
16 house.

17 SENATOR SQUADRON: Mr. President.

18 ACTING PRESIDENT FLANAGAN:

19 Senator Squadron, why do you rise?

20 SENATOR SQUADRON: Point of order,  
21 an incidental question of order on that motion.

22 ACTING PRESIDENT FLANAGAN: State  
23 your question, Senator Squadron.

24 Excuse me. Senator Libous, why do  
25 you rise?

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1 SENATOR LIBOUS: Mr. President, a  
2 motion is before the house and a vote needs to be  
3 taken on whether or not the debate should be  
4 ended. And when a motion is on the floor of the  
5 house, a vote must be taken immediately.

6 SENATOR SQUADRON: Mr. President,  
7 pursuant to Rule 9, Section 3, paragraph F,  
8 incidental questions of order are in order on  
9 motions such as this.

10 ACTING PRESIDENT FLANAGAN:  
11 Senator Squadron, Senator Libous's point is  
12 well-taken pursuant to Rule 9, Section 3(d). A  
13 motion is in order and it is nondebateable.

14 SENATOR SQUADRON: Mr. President,  
15 my --

16 ACTING PRESIDENT FLANAGAN: The  
17 motion before the house is whether or not we  
18 should be closing debate.

19 SENATOR SQUADRON: Mr. President,  
20 my -- Mr. President --



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1           ACTING PRESIDENT FLANAGAN:  
2 Senator Squadron, to your question, incidental or  
3 otherwise, I have a clock right down here. We  
4 have been debating this bill for approximately  
5 two hours and 20 minutes.

6           Senator Libous.

7           SENATOR SQUADRON: Mr. President,  
8 if you subtract the time that the chair has spent  
9 and the time that the questioner has been waiting  
10 for an answer, we are not yet at two hours.

11           I believe Senator Sampson would be  
12 like to be recognized.

13           SENATOR LIBOUS: But  
14 Mr. President --

15           ACTING PRESIDENT FLANAGAN:  
16 Senator Libous.

17           SENATOR LIBOUS: Mr. President, a  
18 motion to end debate has passed the house.  
19 Debate has ended and it's now time to call the  
20 roll.

21           SENATOR SQUADRON: Mr. President,  
22 the vote on that question was called  
23 inappropriately because we were on an incidental  
24 question of order.

25           SENATOR LIBOUS: Mr. President --

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1           SENATOR SQUADRON: Which, under  
2 Rule 9, Section 3, paragraph F, is in order.

3           ACTING PRESIDENT FLANAGAN:

4 Senator Squadron, your point is out of order.  
5 The motion before the house has passed. I as a

6 courtesy --

7                   SENATOR SQUADRON: Mr. President,  
8 I'd like to appeal the ruling of the chair.

9                   ACTING PRESIDENT FLANAGAN:  
10 Senator Squadron. Before I go to your question,  
11 your leader has risen, and I don't want to be  
12 disrespectful to him.

13                   Senator Sampson, why do you rise?

14                   SENATOR SAMPSON: Thank you very  
15 much, Mr. President. I just rise to make a  
16 comment on the motion that just passed or didn't  
17 pass.

18                   You know, you stood up there and  
19 you talked about decorum and you talked about  
20 respect. This is something that we try to have a  
21 cohesive body and be respectful of one another.  
22 I can remember when the Republican Conference was  
23 in the minority, they were disgusted by the way  
24 they were treated. They were disgusted by the  
25 way they were cut off. As a result, they took

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1 matters in their own hands and created  
2 unfortunately this coup situation.

3                   And now we're talking about voting  
4 on redistricting. It happens every 10 years, one  
5 of the most important votes that some members in  
6 this chamber have to vote on, that affects people  
7 throughout the State of New York. And for one of  
8 my colleagues to cut us off in debate, whether  
9 they are entitled to or not, where is the respect  
10 and where is the decorum?

11 We are all duly elected officials,  
12 and we represent individuals that give us the  
13 privilege to represent them. This is not a seat  
14 that we hold that is indefinite. But to be  
15 disrespected and say that debate has to end on  
16 something that some of us hold dear to our heart,  
17 my colleagues -- and I'm appealing to what not is  
18 politically correct, but what is morally  
19 correct.

20 To deny our colleagues on this side  
21 of the aisle an opportunity to debate something  
22 that is extremely important to them lacks any  
23 sort of decorum. That is a form of disrespect  
24 not only to us but to this entire body,  
25 Mr. President.

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1 ACTING PRESIDENT FLANAGAN:

2 Senator Sampson, I appreciate your comments.

3 The motion that was before the  
4 house was to close the debate. That motion has  
5 passed, with the majority of the Senators present  
6 voting in the affirmative.

7 The debate on that bill is closed.

8 The Secretary will ring the bell.

9 SENATOR SQUADRON: Mr. President,  
10 I appealed the ruling of the chair. And we --  
11 out of deference to the leader of the Democratic  
12 Conference, we held that appeal. But I appealed  
13 the ruling of the chair, Mr. President, on that  
14 motion.

15 ACTING PRESIDENT FLANAGAN: On the  
16 appeal by Senator Squadron, all those in favor of

17 sustaining the chair signify by saying aye.

18 (Response of "Aye.")

19 SENATOR SQUADRON: Show of hands.

20 Show of hands, please, Mr. President.

21 ACTING PRESIDENT FLANAGAN:

22 Senator Squadron has asked for a show of hands.

23 Senator Squadron -- Senator

24 Squadron.

25 All those in favor of sustaining

♀

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1 the chair signify by saying aye or raising their  
2 hands.

3 (Response of "Aye.")

4 ACTING PRESIDENT FLANAGAN:

5 Senator Squadron, the ruling of the chair has  
6 been appealed and has been upheld.

7 SENATOR SQUADRON: Mr. President,  
8 would you please report to me the count of the  
9 vote on that motion.

10 ACTING PRESIDENT FLANAGAN: Ayes,  
11 32. 33, excuse me.

12 SENATOR SAMPSON: Mr. President,  
13 may I be heard?

14 ACTING PRESIDENT FLANAGAN:

15 Senator Sampson.

16 SENATOR SAMPSON: Mr. President,  
17 it has come to the point in time that we're being  
18 denied an opportunity to speak on, to debate on  
19 an issue that is fundamentally important to our  
20 communities. We are being denied a right that  
21 our constituents elect us to do, to come up here



2 ask that the members not leave the chamber.

3 Senator Sampson.

4 SENATOR SAMPSON: Senator

5 Flanagan, you know, I respect you, but it comes

6 to a point in time where enough is enough. Our

7 bills are denied, resolutions are denied. It

8 comes to a point in time where we have to stand

9 up for what is right. Thank you very much.

10 ACTING PRESIDENT FLANAGAN: Thank

11 you, Senator Sampson.

12 Senator Libous.

13 SENATOR LIBOUS: Is there a

14 substitution at the desk?

15 ACTING PRESIDENT FLANAGAN: The

16 Secretary will read the substitution.

17 THE SECRETARY: In relation to

18 Calendar Number 363, Senator Nozzolio moves to

19 discharge, from the Committee on Rules --

20 SENATOR SQUADRON: Mr. President,

21 point of order.

22 THE SECRETARY: -- Assembly Bill

23 Number 9525 and substitute it for the identical

24 Senate Bill Number 6696, Third Reading Calendar

25 363.

♀

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1 ACTING PRESIDENT FLANAGAN:

2 Substitution ordered.

3 The Secretary will read.

4 THE SECRETARY: Calendar 363,

5 substituted by Member of the Assembly McEneny,

6 Assembly Print Number 9525, an act to amend the

7 State Law.

8 ACTING PRESIDENT FLANAGAN:

9 Senator Libous.

10 SENATOR LIBOUS: We're on the roll  
11 call; correct?

12 ACTING PRESIDENT FLANAGAN: Yes.

13 SENATOR LIBOUS: Call the roll.

14 SENATOR SQUADRON: Mr. President,  
15 point of order. The bells were not rung. We are  
16 not on the controversial calendar.

17 ACTING PRESIDENT FLANAGAN:

18 Senator Squadron, the bells are rung. If you  
19 want to explain your vote, you'll be entitled to  
20 that. We are on a roll call.

21 SENATOR SQUADRON: Mr. President,  
22 this vote is being called out of order and  
23 outside of the Senate rules.

24 ACTING PRESIDENT FLANAGAN:

25 Senator Squadron, you are out of order.

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1 We are on a roll call. If you  
2 would like to explain your vote, I would be happy  
3 to recognize you.

4 Call the roll.

5 THE SECRETARY: Section 5. This  
6 act shall take effect immediately.

7 (The Secretary called the roll.)

8 ACTING PRESIDENT FLANAGAN:

9 Announce the results.

10 THE SECRETARY: In relation to  
11 Calendar Number 363, absent from voting:

12 Senators Adams, Addabbo, Avella, Breslin, Diaz,  
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13 Di lan, Duane, Espai llat, Gi anari s,  
14 Hassell -Thompson, Huntley, Kennedy, Krueger,  
15 Montgomery, Parker, Peral ta, Perki ns, Ri vera,  
16 Sampson, Serrano, Smi th, Squadron, Stavi sky, and  
17 Stewart-Cousi ns.

18 Ayes, 36. Nays, 0.

19 ACTING PRESIDENT FLANAGAN: The  
20 bill is passed.

21

22

23

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