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# New York Supreme Court

## APPELLATE DIVISION—FIRST DEPARTMENT

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DESIS RISING UP AND MOVING, AARON FERNANDO, PAUL PERSAUD, SARWAN PERSAUD, NADIA PERSAUD, NADIRA PERSAUD, BISHAM PERSAUD, HARBHAJAN S. SURI, CHARANJIT S. SURI, DAVINDER S. SURI, SUKHVIR SINGH, SWARAN SINGH, LOVEDEEP MULTANI, PRINHPAL S. BAWA, KAMLESH TANEJA, RAJWINDER KAUR, INDERBIR SINGH, PARAMJIT KAUR and RAJBIR SINGH,

**CASE NO.  
2023-03051**

*Petitioners-Appellants,*

—against—

NEW YORK CITY DISTRICTING COMMISSION, CHAIR DENNIS M. WALCOTT, HON. MARILYN D. GO, MARIA MATEO, JOSHUA SCHNEPS, LISA SORIN, MSGR.

*(Caption continued on inside cover)*

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### BRIEF FOR PETITIONERS-APPELLANTS

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## TABLE OF CONTENTS

INTRODUCTION .....	3
FACTUAL BACKGROUND.....	7
I.    Voting Rights in New York City.....	7
II.   The 1989 Charter Revision .....	9
III.  The 1989 Preclearance Report .....	13
IV.  The 1990 Districting Commission .....	15
V.   The Asian Community in Richmond Hill/South Ozone Park.....	15
PROCEDURAL BACKGROUND.....	19
I.    The 2022–2023 Districting Process .....	19
A.    Unity Map .....	19
B.    The Commission’s Final Map.....	20
C.    Certification Statement .....	22
II.   Article 78 Petition .....	23
A.    The Commission’s Opposition .....	24
B.    The Trial Court’s Order .....	26
STANDARD OF REVIEW .....	27
ARGUMENT .....	29
I.    The Final Plan Violated Section 52(1) of the Charter .....	29
A.    The Charter’s Districting Criteria and Section 52(1)(b).....	31
B.    The Final Map Violated the Charter .....	35
i.    The Commission’s Determination Is Irreconcilable with the Text and Purpose of Section 52(1)(b) .....	36
ii.   The Commission Prioritized Neighborhood Integrity Over Minority Rights.....	42
C.    The Trial Court Misconstrued Section 52(1) as a Bare Procedural Requirement.....	43
D.    The Court Incorrectly Suggested Section 52(1) Is Coextensive with the VRA .....	46
II.   Both the Commission and the Trial Court Overlooked Basic Requirements of New York Administrative Law .....	49
A.    The Commission Failed to Provide a Reasoned, Supported Justification .....	50

i.	The Commission Failed to Provide an Explanation for its Determination.....	52
ii.	The Commission’s Decision Finds No Support in the Record.....	54
B.	The Trial Court Applied an Overly Deferential Standard .....	57
CONCLUSION .....		60

## TABLE OF AUTHORITIES

Page(s)

### CASES

<i>Matter of Acosta v. NY City Dep't of Educ.</i> , 16 NY3d 309 (2011) .....	57, 59
<i>Brooklyn Heights Ass'n, Inc. v. Macchiarola</i> , 82 NY2d 101 (1993) .....	23
<i>Matter of Castle Props. Co. v. Ackerson</i> , 163 AD2d 785 (3d Dept 1990) .....	6, 54
<i>Matter of Cohen v. Bd. of Appeals of Vill. of Saddle Rock</i> , 297 AD2d 38 (2d Dept 2003) .....	28
<i>Matter of Figel v. Dwyer</i> , 75 AD3d 802 (3d Dept 2010) .....	6, 52
<i>Matter of Greer v. Bane</i> , 158 Misc2d 486 (NY Sup Ct 1993) .....	27, 28, 43, 57
<i>Matter of Italian Sons &amp; Daughters of Am.-Amici Lodge No. 255 v. Common Council of Buffalo</i> , 89 AD2d 822 (4th Dept 1982) .....	58
<i>Matter of Jewish Mem. Hosp. v. Whalen</i> , 47 NY2d 331 (1979) .....	50
<i>Koch v. Sheehan</i> , 21 NY3d 697 (2013) .....	50
<i>Matter of Kosmider v. Whitney</i> , 34 NY3d 48 (2019) .....	59
<i>Matter of L&amp;M Bus Corp. v. New York City Dept. of Educ.</i> , 71 AD3d 127 (1st Dept 2009) .....	53
<i>Matter of Marcus v. Wright</i> , 225 AD2d 447 (1st Dept 1996) .....	45

<i>Mashreqbank PSC v. Ahmed Hamad Al Gosaibi &amp; Bros. Co.</i> , 23 NY3d 129 (2014) .....	28
<i>Metro. Taxicab Bd. of Trade v. NYC Taxi &amp; Limousine Comm’n</i> , 18 NY3d 329 (2011) .....	6, 28, 39, 50
<i>Matter of Mitchell v. Borakove</i> , 225 AD2d 435 (1st Dept 1996) .....	23
<i>Morris v. Bd. of Estimate</i> , 647 F Supp 1463 (EDNY 1986), <i>aff’d</i> , 489 US 688 (1989).....	8
<i>Matter of Murphy v. New York State Div. of Hous. &amp; Cmty. Renewal</i> , 21 NY3d 649 (2013) .....	27, 57
<i>New York State Ass’n of Cnties. v. Axelrod</i> , 78 NY2d 158 (1991) .....	50
<i>Patrolmen’s Benevolent Ass’n of City of New York, Inc. v. New York City Office of Collective Bargaining</i> , 35 Misc 3d 1234(A), 2012 WL 2018200 (NY Sup Ct May 29, 2012) .....	53
<i>Matter of People by James v. Schofield</i> , 199 AD3d 5 (3d Dept 2021) .....	<i>passim</i>
<i>People v. Romualdo</i> , 37 NY3d 1091 (2021) .....	28, 46
<i>Reynolds v. Sims</i> , 377 US 533 (1964).....	31
<i>Rivicci v. NYC Fire Dept.</i> , 2022 NY Slip Op. 34070, 2022 WL 17415436 (NY Sup Ct 2022) .....	59
<i>Matter of Rudey v. Landmarks Preservation Comm’n</i> , 182 AD2d 61 (1st Dept 1991) .....	50
<i>Skyline Inn Corp. v. NY State Liquor Auth.</i> , 44 NY2d 695 (1978) .....	28
<i>Matter of Thomas v. Condon</i> , 128 AD3d 528 (1st Dept 2015) .....	28, 49

<i>Thornburg v. Gingles</i> , 478 US 30 (1986).....	12
<i>Tinnerman v. Bd. of Educ. of City School Dist. of City of New York</i> , 50 AD3d 592 (1st Dept 2008) .....	53
<i>United Jewish Orgs. v. Carey</i> , 430 US 144 (1977).....	8
<i>Xiang Fu He v. Troon Mgmt., Inc.</i> , 34 NY3d 167 (2019).....	49

**STATUTES**

42 USC § 1973 (1989) .....	47
New York City Charter	
§ 51.....	<i>passim</i>
§ 52.....	<i>passim</i>
New York Civil Practice and Rules Article 78.....	<i>passim</i>
NY Stat. § 74 (McKinney 2023).....	48
Voting Rights Act	
Generally.....	<i>passim</i>
§ 2.....	47
§ 5.....	3, 8, 47

**OTHER AUTHORITIES**

NYC Charter Commission, Submission Under Section 5 of the Voting Rights Act for Preclearance of Proposed Amendments to the New York City Charter (Aug. 11, 1989) ("1989 Preclearance Report") .....	<i>passim</i>
Vol. 8 (May 6, 1989 Meeting Tr.) .....	<i>passim</i>
Vol. 12 (June 15, 1989 Meeting Tr.) .....	3, 10, 44
Vol. 15 (June 22, 1989 Meeting Tr.) .....	12, 33
Dr. Lisa Handley, Report to the New York City Districting Commission, <a href="https://www.nyc.gov/assets/districting/downloads/pdf/RBV-Report.pdf">https://www.nyc.gov/assets/districting/downloads/pdf/RBV- Report.pdf</a> (“Handley Report”).....	16, 17, 18, 56

Ethan Geringer-Sameth & Samar Khurshid, *Key Takeaways from New York City Council Map Redistricting Commission Will Vote On*, GOTHAM GAZETTE (Sept. 21, 2022), <https://www.gothamgazette.com/city/11588-key-takeaways-new-city-council-map-redistricting> .....16

Frank J. Macchiarola & Joseph G. Diaz, *Minority Political Empowerment in New York City: Beyond the Voting Rights Act 46-47*, *Political Science Quarterly* (1993) .....*passim*

Frank Lynn, *Charter Members Back Borough Influence*, NY Times (Mar. 25, 1989), <https://www.nytimes.com/1989/03/25/nyregion/charter-panel-members-back-borough-influence.html>.....7

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Letter of Wm. Bradford Reynolds, DOJ Civil Rights Division to Fabian Palomino, NYC Council Redistricting Commission at 3-4 (Oct. 27, 1981), <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/NY-1040.pdf>.....8

Mar Parrott, *Richmond Hill has Second-Highest 7-Day COVID Positivity in City*, QUEENS CHRONICLE (Nov. 9, 2020), [https://www.qchron.com/editions/south/richmond-hill-has-second-highest-7-day-covid-positivity-in-city/article\\_24a9a81a-22d3-11eb-ad27-f7420b91225a.html](https://www.qchron.com/editions/south/richmond-hill-has-second-highest-7-day-covid-positivity-in-city/article_24a9a81a-22d3-11eb-ad27-f7420b91225a.html).....18

Rachel Holliday Smith at al., *Get to Know Your City Council District*, THE CITY (District 29), <https://projects.thecity.nyc/new-york-city-council-district/> .....22, 35

Shannan Ferry, *Richmond Hill Sees Highest COVID-19 Positive Rate in NYC*, SPECTRUM NEWS NY 1 (Jan. 12, 2021), <https://ny1.com/nyc/all-boroughs/coronavirus/2021/01/13/richmond-hill-sees-highest-covid-19-positivity-rate> .....18



## **PRELIMINARY STATEMENT**

This is an appeal from an order of the Supreme Court, New York County, rendered on May 18, 2023, denying Petitioners-Appellants’ request for injunctive relief and dismissing Petitioners-Appellants’ Article 78 petition challenging the lawfulness of the New York City Council district map under Section 52(1) of the New York City Charter.

Notice of appeal was timely filed. ROA2–3.<sup>1</sup> On appeal, Petitioners-Appellants challenge the trial court’s dismissal of their Article 78 petition, but do not challenge the denial of preliminary injunctive relief because the City Council election for 2023 has already taken place.

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<sup>1</sup> Citations to “ROA\_\_” refer to the page numbers of the Record on Appeal. Citations to “ADD\_\_” refer to the page numbers of the Legal Addendum. The Legal Addendum consists of relevant authorities that are available at the New York City Municipal Library at 31 Chambers Street.

## QUESTIONS PRESENTED

1. Whether the New York City Districting Commission violated Section 52(1)(b) of the New York City Charter (the “Charter”) by failing to prioritize the “fair and effective representation” of the Asian minority community in the Richmond Hill/South Ozone Park neighborhood “to the maximum extent practicable.” (The court below answered this question in the negative.)

2. Whether the Districting Commission’s Final Map should be set aside as arbitrary and capricious because the Commission failed to provide a reasoned explanation for its action, and/or because there is no evidence to support the Map’s compliance with the Charter. (The court below answered this question in the negative.)

## INTRODUCTION

In 1989, the City of New York engaged in a wholesale restructuring of its government, in part to cure its unsavory history with minority voting rights. In the context of districting, the “single most important” new initiative was Section 52(1)(b) of the New York City Charter,<sup>2</sup> which required districting commissions to prioritize “fair and effective representation” of minority groups “to the maximum extent practicable”—and over all other considerations apart from the “one person, one vote” proportionality principle. NY City Charter § 52(1). As the Charter’s framers explained, that provision instructs districting commissions to afford “extremely high priority” to the voting rights of the minority groups whose votes had been diluted and ignored before the Charter’s revision. 1989 Preclearance Report at 22 (ADD23).

In the decades since, the Queens neighborhood of Richmond Hill/South Ozone Park (“RHSOP”) has become a focal point for New York’s Asian community. Today, RHSOP is home to a vibrant and cohesive community of people who trace their origins to a series of migrations from India, Pakistan, and Bangladesh. Yet despite the demographic concentration in this area, the community has never had a

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<sup>2</sup> See NYC Charter Commission, Submission Under Section 5 of the Voting Rights Act for Preclearance of Proposed Amendments to the New York City Charter (Aug. 11, 1989) (hereinafter “1989 Preclearance Report”) (ADD2–68), Vol. 12 at 8 (June 15, 1989 Meeting Tr.) (ADD137).

voice in city government because the RHSOP area has been split into three City Council districts. For that reason, the RHSOP Asian community has never enjoyed any meaningful influence in the Council and, as a result, has been starved of city resources, including (most recently) vital public health resources to address the COVID-19 pandemic.

In 2022, the City conducted its latest round of decennial redistricting. As part of that process, the RHSOP Asian community submitted testimony and written statements urging the Districting Commission to draw districts that would remedy their disenfranchisement. Community groups collaborated to define the boundaries of the RHSOP community, which they submitted early in the process, and which community members supported in their subsequent public testimony. *See* ROA125 (Map); *see also* ROA29, ROA210–215.

The community also banded together with Black and Hispanic communities to propose a “Unity Map” that would improve the voting power of all minority groups in the area, while keeping the RHSOP community largely whole.

These pleas were flatly ignored. Rather than prioritizing “fair and effective representation” of this community, the Commission created a Final Map that split the community even further—this time, along the community’s main thoroughfare of Liberty Avenue.

If Section 52(1)(b) of the Charter is to mean anything, the Commission's decision cannot stand. The "fair and effective representation" criterion is not discretionary: the Charter states that it must be prioritized over all considerations other than the "one person, one vote" principle. The Districting Commission clearly does not *prioritize* "fair and effective representation" when it selects a map that dilutes a minority group's voting power into nothingness. That is especially so when, as here, the Commission had an alternative map that, *by any reasonable metric*, would have more effectively ensured "fair and effective representation" for all minority groups in the area.

The trial court's decision to the contrary was based on its misunderstanding of Section 52(1) as a bare procedural requirement that the Commission can satisfy merely by convening public meetings and submitting a boilerplate "certification" stating (without explanation) that its chosen map complies with applicable law. That holding contravenes the text and purpose of the Charter, and turns New York City's landmark voting rights law into a virtual nullity.

Had the court scrutinized the Commission's decision-making as required, it would have found not only that the Commission's Map violated the Charter, but also that the Commission's decision-making fell far short of the procedural requirements imposed on agencies under New York law. At no point during the redistricting process (or, for that matter, during the ensuing litigation) did the Commission

present a rational explanation for its decision to dilute the voting power of the RHSOP Asian community. That failure alone “precludes meaningful review of the rationality of the [Commission’s] decision” and requires that the Final Map be set aside. *Matter of Figel v. Dwyer*, 75 AD3d 802, 804 (3d Dept 2010). And even if the Commission *had* explained itself, its action would still be invalid for lack of “support in the record for its decision.” *Metro. Taxicab Bd. of Trade v. NYC Taxi & Limousine Comm’n*, 18 NY3d 329, 333 (2011). Indeed, the Commission was unable to point to evidence that it gave any consideration whatsoever to the application of Section 52(1) of the Charter to the RHSOP Asian community, even when pressed to do so at oral argument below. Because “the record provides no evidentiary basis for” the Commission’s decision, “its decision [] was arbitrary and capricious” and must be set aside. *Matter of Castle Props. Co. v. Ackerson*, 163 AD2d 785, 787 (3d Dept 1990).

To give meaning to Section 52(1) of the Charter and ensure that future districting commissions abide by its terms, this Court should vacate the Commission’s Final Map and instruct the Commission to redraw the map in a way that “ensures [] fair and effective representation” for the RHSOP Asian community. At a minimum, this Court should vacate the trial court’s order with instructions for the court to reconsider the Final Map’s compliance with the Charter’s substantive

requirements and the Commission’s compliance with the basic duties of reasoned decision-making imposed by New York law.

## **FACTUAL BACKGROUND**

### **I. Voting Rights in New York City**

Minority voting rights in New York City are uniquely complicated because New York City is uniquely diverse. While districting elsewhere often reflects a struggle between the interests of a dominant majority and a single minority group, districting in New York involves a number of overlapping minorities, who must “vie for representation among themselves.” Frank J. Macchiarola & Joseph G. Diaz, *Minority Political Empowerment in New York City: Beyond the Voting Rights Act* 46–47, *Political Science Quarterly* (1993); *see also* Frederick A.O. Schwarz Jr. & Eric Lane, *The Policy and Politics of Charter Making: The Story of New York City’s 1989 Charter*, 42 *N.Y. L. Sch. L. Rev.* 723, 730 (1998) (noting “the City’s vastly pluralistic population”).<sup>3</sup>

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<sup>3</sup> Frederick A. O. Schwarz, Jr. was chairman of the Commission in charge of revising the New York City Charter, and Eric Lane served as the Commission’s executive director. Schwarz & Lane, *supra*, at 729–730. Frank J. Macchiarola briefly served on the 1989 Charter Commission, but resigned several months before current Section 52(1)(b) was proposed, discussed, and adopted. *See* Frank Lynn, *Charter Members Back Borough Influence*, *NY Times* (Mar. 25, 1989), <https://www.nytimes.com/1989/03/25/nyregion/charter-panel-members-back-borough-influence.html>.

Before the adoption of the current Charter in 1989, New York’s history of minority representation was “mixed,” and a “wide cross-section of minorities had a powerful sense of past unfairness” and “exclusion from full and fair participation in the electoral process.” Schwarz & Lane, *supra*, at 745–746. The City had become subject to the pre-clearance requirements of Section 5 of the federal Voting Rights Act in the 1960s due to low minority participation in the political process. *See United Jewish Orgs. v. Carey*, 430 US 144, 148 (1977). The Department of Justice (“DOJ”) later struck down the City’s 1981 districting plan out of concern that it did “not fairly reflect minority voting strength” and “fragment[ed]” “substantial minority populations.” Letter of Wm. Bradford Reynolds, DOJ Civil Rights Division to Fabian Palomino, NYC Council Redistricting Commission at 3–4 (Oct. 27, 1981), <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/NY-1040.pdf>. And in 1986, a federal court held that the City’s Board of Estimate violated the one-person, one-vote principle. *Morris v. Bd. of Estimate*, 647 F Supp 1463, 1478–1479 (EDNY 1986), *aff’d*, 489 US 688 (1989).

That same year, Mayor Ed Koch established a Charter Revision Commission (“Charter Commission”) to redesign the City’s government, in part as a response to this checkered history. Schwarz & Lane, *supra*, at 732–733. One of the Charter Commission’s paramount goals was to address the City’s “troublesome racial issues” by prioritizing the interests of the overlapping minority communities that



collectively comprised “almost fifty percent” of the City’s population. *Id.* at 743–744 (noting the City’s “growing Asian population”). As the Chairman of the Charter Commission subsequently explained, a “dominant theme in the Commission’s work was enhancing minority political opportunities and increasing the likelihood of minority political participation.” *Id.* at 744.

## **II. The 1989 Charter Revision**

One central part of the Charter Commission’s work was to revise the provisions of the Charter relating to the decennial redistricting process. In 1989, the Charter required districting commissions to “keep intact neighborhoods and communities with established ties of common interest and association, whether historical, racial, economic, ethnic, or religious,” *id.*, but did not require (or even permit) mapmakers to prioritize the protection of cohesive minority voting blocs. *See* 1986 New York City Charter, § 52. As discussed above, ensuring “fair opportunities for all races and groups for representation” in a pluralistic city—with multiple overlapping minority communities—presented a substantial challenge. *See* Schwarz & Lane, *supra*, at 752. The Charter Commission discussed at length the unique problem of “mixed” districts, in which minorities might collectively comprise a majority of the voting base, but no single minority would be sufficiently dominant to form a majority on its own. 1989 Preclearance Report, Vol. 8 at 167–169 (May 6, 1989 Meeting Tr.) (ADD111–113).

Of all the minorities in the City, the Asian community had been the most overlooked. At that time, there were over “half a million” Asians living in New York City. Macchiarola & Diaz, *supra*, at 50. But the Asian community had “never had any significant political influence” because the “dispersal” of that community generally made the creation of Asian-majority districts “an impossibility.” *Id.* For that reason, the Charter Commission considered it “extremely important” to “force the redistricters” to consider overlapping minority interests when drawing district maps. 1989 Preclearance Report, Vol. 8 at 132 (May 6, 1989 Meeting Tr.) (ADD76).

To that end, on May 6, 1989, the Charter Commission proposed a provision that would require districting commissions to ensure “effective representation of racial and ethnic minorities”—which they believed to be an “essential criteria” missing from the prior Charter. 1989 Preclearance Report, Vol. 8 at 130–131 (May 6, 1989 Meeting Tr.) (ADD74–75). The Charter Commission adopted the proposal and, in subsequent meetings, described this new provision as “the single most important thing” it could do to protect voting rights for “racial and language groups” in the city. 1989 Preclearance Report, Vol. 12 at 8 (June 15, 1989 Meeting Tr.) (ADD137). The full text of the resulting provision—Section 52(1) of the Charter—is as follows:

Section 52. District plan; criteria. 1. In the preparation of its plan for dividing the city into districts for the election of council

members, the commission shall apply the criteria set forth in the following paragraphs to the maximum extent practicable. The following paragraphs shall be applied and given priority in the order in which they are listed.

- A. The difference in population between the least populous and the most populous districts shall not exceed ten percentum (10%) of the average population for all districts, according to figures available from the most recent decennial census. Any such differences in population must be justified by the other criteria set forth in this section.
- b. Such districting plan shall be established in a manner that ensures the fair and effective representation of the racial and language minority groups in New York city which are protected by the United States voting rights act of nineteen hundred sixty-five, as amended.
- c. District lines shall keep intact neighborhoods and communities with established ties of common interest and association, whether historical, racial, economic, ethnic, religious, or other.
- d. Each district shall be compact and shall be no more than twice as long as it is wide.
- e. A district shall not cross borough or county boundaries.
- f. Districts shall not be drawn for the purpose of separating geographic concentrations of voters enrolled in the same political party into two or more districts in order to diminish the effective representation of such voters.
- g. The districting plan shall be established in a manner that minimizes the sum of the length of the boundaries of all of the districts included in the plan.

NY City Charter § 52(1) (emphasis added). As shown above, Section 52(1) of the Charter requires that the districting commission “ensure[] the fair and effective representation of . . . minority groups in New York city” “to the maximum extent

practicable.” *Id.*<sup>4</sup> The Charter requires mapmakers to prioritize these minority interests above all considerations other than the “one-person one-vote” proportionality principle enshrined in Section 52(1)(a). *Id.* (requiring the “following paragraphs [to] be applied and given priority in the order in which they are listed”). As such, the Charter expressly prohibits districting commissions from prioritizing, for example, compactness or the desire to “keep intact neighborhoods and communities with established ties of common interest” over the “fair and effective representation” of identifiable minorities. *Id.*<sup>5</sup>

Importantly, the Charter Commission did not attempt to import the federal Voting Rights Act (“VRA”) standard into the Charter’s substantive districting criteria. That made sense, as the “Voting Rights Act was not prepared to deal with the issue of how to treat [minority] groups when their population is insufficient to form a minority district but enough to exert influence.” Macchiarola & Diaz, *supra*,

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<sup>4</sup> Section 51(g) of the new Charter required the districting commission to submit a certification, signed by a majority of the commissioners, that “set[s] forth the manner in which the commission implemented the requirements of [Section 52(1)(b)].” NY City Charter § 51(g). This certification provision was intended “to give some greater force to the [new, minority-protective] criteria.” *See* 1989 Preclearance Report, Vol. 15 at 68–69 (June 22, 1989 Meeting Tr.) (ADD141–142).

<sup>5</sup> Section 52(1)(b) extends these protections to all “minority groups . . . which are protected by the United States voting rights act of nineteen hundred sixty-five, as amended.” NY City Charter, Section 52(1)(b). As the United States Supreme Court had stated three years prior, those “groups” include “member[s] of a protected class of racial and language minorities.” *Thornburg v. Gingles*, 478 US 30, 43 (1986).

at 50. The VRA, in other words, was designed to “address the problems raised in locales where whites in power were able to perpetuate [] or create anew [] systems of discrimination in the electoral arena, generally against blacks, Latinos, or Asians.” *Id.* at 46. It was not designed to intermediate between multiple overlapping minority communities in a large metropolis like New York City, in which multiple “protected groups would [] vie for representation among themselves.” *Id.* So while the Charter’s new provision operated in the shadow of the federal VRA, it did not incorporate the VRA in its substantive commands.<sup>6</sup> Rather, it used distinct language reflecting the Charter Commission’s intent to implement a new, independent standard, tailored to the unique needs of New York City’s overlapping minority communities.

### **III. The 1989 Preclearance Report**

On August 11, 1989, the Charter Commission filed a submission requesting DOJ preclearance of its proposed Charter revisions in which it elaborated on the function of Section 52(1)(b). *See generally* 1989 Preclearance Report (ADD2–68). In that report, the Charter Commission reaffirmed that districting commissions must “accord *extremely high priority* to fair and effective representation of racial and language minority groups”—and that “[a]ll other criteria,” (with the exception of the

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<sup>6</sup> Indeed, this is underscored by Section 52(1)’s sole reference to the VRA, which is used only to *define* “the racial and language minority groups” that are protected under the provision. NY City Charter § 52(1).

“one person, one vote” principle) including “community and neighborhood integrity,” are “to be given less weight.” ADD23 (emphasis added).

The report also addressed the City’s Asian community and, in so doing, demonstrated the intended operation of the new “fair and effective representation” provision. ADD21–22. The Commission noted that “some representatives of several Asian American organizations in lower Manhattan” had urged the Commission to add an additional eight seats to the City Council in order to reduce the size of each district and, in turn, increase the possibility that their community could elect a representative candidate to the Council. ADD21. The Commission rejected this proposal out of concern that a larger Council would be “[un]workab[le].” *See* Schwarz & Lane, *supra*, at 787. But the Commission also reassured the DOJ that the newly added minority-protective districting criteria would guarantee that these Asian communities would not be fractured into separate districts, *see* 1989 Preclearance Report at 21 (ADD22), even though those communities were too “dispers[ed]” to form a majority in a single district, *see* Macchiarola & Diaz, *supra*, at 50.

To demonstrate, the Commission provided two prototype 51-member districting maps in which the Asian community in lower Manhattan would be “concentrate[d] . . . into [a] single council district[.]” 1989 Preclearance Report at 21 (ADD22); 1989 Preclearance Report, Ex. 33 (ROA105–116). The lower

Manhattan prototypical districts drawn were far from Asian-majority—to the contrary, the Asian population would comprise only 28.70% or 30.61% of the new Chinatown district. 1989 Preclearance Report, Ex. 33 at 4 (ROA108). Nevertheless, the Commission stressed that the new, minority-protective districting criteria would “require[] the Districting Commission to accord very high priority” to keeping this community together. *See* 1989 Preclearance Report at 21 (ADD22).

#### **IV. The 1990 Districting Commission**

The first districting process after the adoption of the 1989 Charter took place in 1990. The 1990 Districting Commission paid close attention to the problem of how to effectively enfranchise the City’s large but dispersed Asian community. Macchiarola & Diaz, *supra*, at 50–51. Eventually, that Commission decided to “create a district to maximize Asian voters” by creating an “Asian influence council districts”—even though the residents of that district would be “largely nonminority.” *Id.* at 51–52.

#### **V. The Asian Community in Richmond Hill/South Ozone Park**

In the four decades since 1991, the Asian community in New York City has grown by 33.6%. ROA61. Asians now represent over 15% of the City’s residents. *Id.* In the 1980s and 1990s, most of the growth in the Asian communities was concentrated in lower Manhattan and in Flushing. *See* 1989 Preclearance Report, at Ex. 33 at 1 (ROA105). Since then, however, much of the growth in the Asian

population has been concentrated in south Queens. Ethan Geringer-Sameth & Samar Khurshid, *Key Takeaways from New York City Council Map Redistricting Commission Will Vote On*, GOTHAM GAZETTE (Sept. 21, 2022), <https://www.gothamgazette.com/city/11588-key-takeaways-new-city-council-map-redistricting>. Today, Asians make up 27.3% of the population of Queens, and 47.8% of the roughly 1.4 million Asian New Yorkers live in that borough. Dr. Lisa Handley, Report to the New York City Districting Commission at 24 (Table 6), <https://www.nyc.gov/assets/districting/downloads/pdf/RBV-Report.pdf> (hereinafter “Handley Report”).

Richmond Hill/South Ozone Park (“RHSOP”)—a Queens neighborhood situated between Forest Park and JFK Airport—is now home to one of the largest Asian communities in the City. ROA221–222. Many of the people who make up that community are Asians whose ancestors migrated from India to countries like Guyana, Trinidad and Tobago, and Suriname as indentured servants in the 1800s. ROA213. Others immigrated directly to Queens from “India, Pakistan and Bangladesh.” ROA146. The Asian community in RHSOP shares “similar language diversity, migration history, cultural and religious tradition[,] and historical faith-based institutions.” ROA156–157; *see also* ROA129–130 (community shares “historical heritage, the same ancestry, [and] the same customs”).



The community’s center of gravity and main thoroughfare is Liberty Avenue, which runs east-to-west through the RHSOP neighborhood. ROA61 (noting “shared institutions including schools, community-based organizations, places of worship, transportation networks and hundreds of ethnic small businesses along a two-mile stretch of Liberty Avenue”). Like the Asian community of the 1980s, however, the Asian community in RHSOP has never had a voice in city government because it has long been divided into two (and often three) surrounding council districts. From 2013 to 2022 the bulk of the community—including the “two-mile stretch of Liberty Avenue” that forms its center of gravity, *see* ROA61—had been included in District 28, a plurality Black district that includes Rochdale Village, a large housing cooperative in Jamaica, Queens. *See* ROA215 (Map).

As a result, despite the fact that the community votes cohesively in City Council elections, the community has been unable to have any meaningful impact on city politics. When Felicia Singh, a lifelong resident of Ozone Park, ran for a seat on the City Council in the 2021, she received overwhelming support from the Asian community in the western parts of RHSOP included in District 32. *See* Handley Report, *supra*, at Appendix H (Asian support for Singh at least 74% and up to 98.4%). But because the Asian community comprised only a small part of District 32—between 16.8% and 20.7%, *see* ROA205—Singh’s support among the RHSOP Asian community was not enough to sway the election’s results, even when

combined with Singh’s substantial support among the Black and Hispanic communities in the district, *see* Handley Report, *supra*, at Appendix H (estimating Black support for Singh as high as 96.0%, and Hispanic support for Singh as high as 74.5%). Singh ultimately lost the election to Joann Ariola, a white candidate with overwhelming support among the white community in the Rockaways that dominated the district. *See id.* (support for Ariola in white community as high as 91.4%).

This lack of a voice in city politics has led to real-world problems—particularly during the COVID-19 pandemic. As a result of the lack of representation on the City Council, the RHSOP community lacks “basic access to senior services, education resources, sanitation,” and “immigration resources.” ROA160. The community suffered some of the highest rates of COVID-19 infection and hospitalization.<sup>7</sup> But because it lacked representation in city government, RHSOP was one of the last neighborhoods to get access to testing and vaccination sites. ROA221; ROA136 (community “struggle[ed] for resources” despite being “number one for COVID incidents”).

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<sup>7</sup> Shannan Ferry, *Richmond Hill Sees Highest COVID-19 Positive Rate in NYC*, SPECTRUM NEWS NY 1 (Jan. 12, 2021), <https://ny1.com/nyc/all-boroughs/coronavirus/2021/01/13/richmond-hill-sees-highest-covid-19-positivity-rate>; Mar Parrott, *Richmond Hill has Second-Highest 7-Day COVID Positivity in City*, QUEENS CHRONICLE (Nov. 9, 2020), [https://www.qchron.com/editions/south/richmond-hill-has-second-highest-7-day-covid-positivity-in-city/article\\_24a9a81a-22d3-11eb-ad27-f7420b91225a.html](https://www.qchron.com/editions/south/richmond-hill-has-second-highest-7-day-covid-positivity-in-city/article_24a9a81a-22d3-11eb-ad27-f7420b91225a.html).

## PROCEDURAL BACKGROUND

### I. The 2022–2023 Districting Process

Redistricting is required under the Charter “every ten years.” NY City Charter § 51(c). The most recent redistricting process began in 2022. As required by Section 51(b) of the Charter, the Commission held public hearings throughout the summer of 2022 to gather the public’s views. *See* NY City Charter § 51(b); ROA255–338.

During those hearings, multiple representatives of the RHSOP Asian community submitted both written and oral testimony to inform the Commission of the importance of keeping the community together. The testimony addressed the “decades old ties,” “religious institutions,” and “cultural centers” that bind the community. ROA93; *see also* ROA123–124, ROA213–215, ROA216–220. Witnesses also delineated the community’s clear geographical boundaries: “Hillside Avenue and Forest Park to the north, Woodhaven Blvd to the west, the Belt Parkway to the south, and the Van Wyck Expressway to the east.” ROA 123–124.

#### A. Unity Map

During this process, a coalition of leading voting rights advocacy organizations representing Asian, Latino, and Black New Yorkers submitted to the Commission a proposed redistricting plan called the “Unity Map.” *See* ROA223–224. The Unity Map placed the bulk of the RHSOP Asian community together in District 32, keeping the area around the community’s main thoroughfare (Liberty Avenue) together. ROA92 (Unity Map).

The Unity Map accomplished this by shifting a section of the central Rockaways—a historically white community—out of District 32 and into District 31 (to the east), which includes the areas around JFK Airport and Edgemere Park. ROA92 (Unity Map) ROA381 (Map Comparison). Under the Unity Map, 33.4% of the population of District 32 would have been Asian. ROA382.<sup>8</sup> And by shifting the boundaries of District 28 to the west and including in that district a portion of Broad Channel (the strip of land connecting Queens to the Rockaways), the Unity Map would have converted that district from a Black plurality (with 37.5% Black population, *see* ROA337), into a Black majority (with a 52.77% Black population, *see* ROA382).

B. The Commission’s Final Map

The Commission conducted roughly 70 hours of closed-door mapping sessions. ROA34–35. On October 6, 2022, it submitted a plan that became the final 2022–2033 City Council district map. ROA256. That map rejected the Unity Map and further split the RHSOP community—this time, along the community’s main thoroughfare, Liberty Avenue. ROA225.

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<sup>8</sup> This number represents a combination of the Census categories “Asian” and “Other.” As explained in Petitioners-Appellants’ Expert Report, as a result of this community’s complex history, almost half of surveyed community members selected “Other” rather than “Asian” during the Census process. ROA64. As a result, “it is highly probabl[e] that the percent of “Other Race” population in Queens City Council Districts” qualifies as “Asian.” *Id.*

Under the Final Map, the vast majority of the RHSOP Asian community was included in District 28—a district with an Asian population of only 16.1%. ROA330. The result was a *decrease* of the Asian population share, not only in District 28, but in Districts 29 and 32 as well. *Compare* ROA337–338 (under 2013–2022 Map, Asian population in Districts 28, 29, and 32 is approximately 20%, 29%, and 16%, respectively), *with* ROA330 (under Final Map, Asian population in Districts 28, 29, and 32 is approximately 16%, 28%, and 14%, respectively). *See also* Table 1, *infra*.

The Commission’s own map makes clear that these changes were not dictated by the need to ensure the “fair and effective representation” of another minority community in the area. Nor was the Commission’s rejection of the Unity Map. To the contrary, the Commission’s Final Map retained a Black plurality in District 28, when it could have converted that district into a stronger Black majority. ROA382 (Unity Map would result in 52.77% Black majority in District 28); ROA330 (Final Map resulted in 45.2% Black plurality in District 28).

Instead, the Commission’s decision appeared to be motivated by a desire to keep together the white neighborhoods in the western and central Rockaways, which were included in District 32. ROA91. In fact, the Final Map *increased* white voting power in District 32: By removing portions of South Ozone Park from this district and including Forest Park, Highland Park, and parts of Glendale, the Commission

increased District 32’s white plurality from 33% to 39%.<sup>9</sup> Keeping these white neighborhoods intact was evidently one of the Commission’s key priorities: indeed, every single one of the maps it proposed during the 2022–23 districting process kept the western and central Rockaways together. ROA162 (Preliminary Plan); ROA208 (Revised Plan); ROA209 (Updated Revised Plan); ROA91 (Final Plan).

### C. Certification Statement

Along with its submission to the City Council, the Commission issued a “Certification Statement.” *See* ROA258; *see also* NY City Charter § 51(g) (requiring “a statement signed by at least nine members of the commission . . . set[ting] forth the manner in which the commission implemented the requirements of [Section 52(1)(b)]”). The statement however, included no discussion of any specific “racial [or] language minority groups.” *See* NY City Charter § 52(1)(b). Instead, the content of the statement related entirely to the process the Commission followed. For example, it stated that the Commission had “determined the geographical location of [] racial and language minority groups,” held “public hearings,” reviewed “written and oral comments from the public,” and ultimately “drew Council district lines to ensure opportunities of racial and language minority groups to participate in the political process.” ROA258–259.

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<sup>9</sup> *See* Rachel Holliday Smith at al., *Get to Know Your City Council District: City Council District 32*, THE CITY, <https://projects.thecity.nyc/new-york-city-council-district/> (last updated Nov. 8, 2023).

Indeed, none of the Commission’s public statements suggested that it gave any consideration to the concerns of the RHSOP Asian community. The only relevant statement occurred during the Commission’s September 29, 2022 public mapping session, in which one Commission member stated that he “wanted originally [] Richmond Hill [] South Ozone Park in one district” but “could not do that.” ROA35.

## **II. Article 78 Petition**

On February 24, 2022, Petitioners-Appellants filed an Article 78 Petition challenging the Districting Commission’s Final Map. ROA17–18. Petitioners-Appellants argued that the Final Plan “violated the New York City Charter by failing to ensure the fair and effective representation to the maximum extent practicable” of the RHSOP Asian community. ROA18; *see also* ROA49 (arguing that Commission violated its “clear legal duty” under Section 52(1)(b) by “elevating a white community” in the central and western Rockaways “over [the] racial minority group” in RHSOP).<sup>10</sup> Petitioners-Appellants sought a judgement “instructing the Districting Commission to certify an amended plan that correctly applies the criteria

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<sup>10</sup> The provisions of the Charter have “the force and effect, and are as binding, as an enactment of the Legislature.” *Matter of Mitchell v. Borakove*, 225 AD2d 435, 440 (1st Dept 1996). New York courts have jurisdiction over Article 78 petitions challenging decisions of the Districting Commission under the Charter’s districting criteria. *See generally Brooklyn Heights Ass’n, Inc. v. Macchiarola*, 82 NY2d 101 (1993).

of § 52(1)(b) to the Richmond Hill/South Ozone Park Asian community as exemplified in the Unity Map.” ROA19. Petitioners-Appellants sought an order enjoining the New York City and State Boards of Elections “from administering City Council elections in New York City until an amended plan that satisfies § 52(1)(b) is certified.” ROA39.

A. The Commission’s Opposition

On March 6, 2023, the Commission (Respondents-Respondents) filed an opposition to Petitioners-Appellants’ request for injunctive relief. *See* ROA357–376. The weight of the Commission’s argument related to the impropriety of injunctive relief in light of the then-upcoming November 2023 election. *See, e.g.*, ROA361–363, ROA365–366. The Commission did not dispute that Section 52 of the Charter requires the Commission to “ensure[] the fair and effective representation of [] racial and language minority groups” or that this directive “shall” be prioritized over all other criteria. ROA357. Instead, the Commission made two arguments in response to Petitioners-Appellants’ argument that the Final Map violated the Charter.

First, the Commission pointed to its certification statement, which (according to the Commission) “set forth a detailed recitation of the procedures that it undertook to ensure proper consideration of [the] needs of protected language minority groups.” ROA371; *see also* ROA404 (Oral Arg. Tr. 22:16–22) (claiming that the



certification is “presumptive evidence” that the Commission’s map complied with the Charter). But, as noted above, nothing in the statement addressed the RHSOP Asian community specifically or explained why the Commission found it appropriate to split the community into three different districts. *See supra* 22.

Second, the Commission claimed that its expert, Dr. Lisa Handley, “conducted a thorough analysis” of the Unity Map, including by analyzing “voting patterns in recent past elections,” and found that the “Asian community was not likely to vote in a coalition with other minority communities in the proposed district.” ROA372; *see also* ROA404, 410 (Oral Arg. Tr. 22:23–23:15, 28:18–23) (claiming that Commission “rel[ied] upon [Dr. Handley’s] statistical analysis regarding the various districts and voting patterns across those districts”).

But none of the record evidence the Commission cited in support of this statement suggests that any such “thorough analysis” took place. The Commission, for example, cited Dr. Handley’s testimony at an August 11, 2022 Commission meeting, *see* ROA372, in which Dr. Handley discussed the general concept of “polarized voting,” but made no mention whatsoever of the Unity Map or any “analysis” of voting patterns of the RHSOP community, *see* ROA163–174. The Commission also cited paragraphs 66 and 67 of the Petition, which summarized that testimony and also cited two documents prepared by Dr. Handley—neither of which discussed the Unity Map or any “voting patterns” of the Asian community in

RHSOP. *See* ROA32–33; ROA175–203. Indeed, when the court later pressed the Commission’s counsel whether there was “anything you can come up with” to demonstrate that the Commission applied the Charter’s requirements, the Commission was unable to point to anything other than the Commission’s certification. ROA410–411 (Oral Arg. Tr. 28:13–29:13).

B. The Trial Court’s Order

On May 18, 2023, the trial court issued an order denying Petitioners-Appellants’ request for injunctive relief, largely based on its conclusion that such relief would disrupt the upcoming elections. *See* ROA15. The court further found that the Commission had not violated Section 52(1)(b) of the Charter. ROA14. The court, however, included no analysis of the Final Map or its compliance with Section 52(1)(b). Instead, the court’s conclusion was based entirely on the Commission’s “complet[ion] [of] the certification process.” *Id.* The court, for example, noted that “[t]here was a public comment process,” and assumed that the Commission “properly considered the testimony, comments, submissions and alternatives.” *Id.* The court also stated that the Commission had “evaluated the [] Final Plan’s compliance with” various laws, including “the New York City Charter,” *id.*—notwithstanding the Commission’s failure to “come up with” any evidence to suggest that it actually evaluated the Charter’s independent districting requirements in its briefing or at oral argument, *see* ROA410–411 (Oral Arg. Tr. 28:13–29:13).

Finally, the court noted that the Commission had retained an expert who had “concluded that the [] Final Plan complied with the [federal] Voting Rights Act,” and suggested that this was evidence that the Commission had “weighed” the criteria and satisfied “all necessary requirements.” ROA14.

On June 2, 2023, Petitioners-Appellants filed a notice of appeal. ROA2–3. Petitioners-Appellants do not challenge the trial court’s denial of injunctive relief, *see* ROA13, in light of the fact that the City Council elections occurred on November 7, 2023. Petitioners-Appellants, however, appeal the lower court’s dismissal of the Article 78 petition on the merits—which, if left undisturbed, will leave Petitioners-Appellants without a remedy until at least the next round of districting in 2033.

### **STANDARD OF REVIEW**

“In reviewing an administrative agency determination, [courts] must ascertain whether there is a rational basis for the action in question or whether it is arbitrary and capricious.” *Matter of Murphy v. New York State Div. of Hous. & Cmty. Renewal*, 21 NY3d 649, 652 (2013). The purpose of this process is to “review the [agency]’s determination to see if it has a rational basis in light of the statutory scheme.” *Matter of Greer v. Bane*, 158 Misc2d 486, 492 (NY Sup Ct 1993); *see also Murphy*, 21 NY3d at 654–655 (courts “must scrutinize” agency actions “for genuine reasonableness and rationality in the specific context presented by a case”) (citation omitted). In so doing, the court must determine whether the agency

“presented any justification with any support in the record for its decision[.]” *Metro. Taxicab*, 18 NYS3d at 333. While the court’s review is deferential, it is not toothless. “An agency’s actions are not sacrosanct merely because the agency has discretion in the matter, since an arbitrary exercise of discretion is subject to judicial review.” *Greer*, 158 Misc2d at 492.

If the agency makes an error of law, the court must remand for the agency to evaluate its decision under the proper standard. *See Skyline Inn Corp. v. NY State Liquor Auth.*, 44 NY2d 695, 696–697 (1978) (Mem.) (instructing lower court to remand to agency where agency determination was affected by error of law); *Matter of Cohen v. Bd. of Appeals of Vill. of Saddle Rock*, 297 AD2d 38, 44 (2d Dept 2003) (because the Board “applied the wrong standard in determining the petitioner’s area variance application,” “the determination was affected by error of law” and “the matter was appropriately remitted to the Board . . . for new determination.”). Similarly, a lower court decision that includes errors of law does not merit deference and must be reversed. *See People v. Romualdo*, 37 NY3d 1091, 1094 (2021) (reversing and remanding where Appellate Division’s decision “constituted error of law”); *Matter of Thomas v. Condon*, 128 AD3d 528, 529 (1st Dept 2015) (reversing where Supreme Court applied the wrong legal standard and the error resulted in prejudice to Article 78 petitioner); *Mashreqbank PSC v. Ahmed Hamad Al Gosaibi*

*& Bros. Co.*, 23 NY3d 129, 137 (2014) (explaining that “where an Appellate Division decision is premised on errors of law, th[e] Court does not defer to it”).

## **ARGUMENT**

This Court should vacate the trial court’s order for two independent reasons. First, the Final Map that the trial court endorsed violated Section 52(1) of the Charter by diluting the voting power of the RHSOP Asian community. The court overlooked this violation by construing Section 52(1) as a bare procedural requirement to conduct a “public comment process,” rather than a substantive framework that binds the Commission’s decision-making. *See infra* Part I. Second, the trial court failed to hold the Commission to fundamental standards of agency decision-making, which require agencies to provide a rational justification for their decisions (which the Commission refused to do) and to point to record evidence to support their decisions (of which there is none). In particular, the trial court abdicated its proper role in reviewing agency action and, as a result, excused the Commission’s refusal to provide an adequate justification for its disenfranchisement of the RHSOP Asian community. *See infra* Part II. For either or both reasons, the trial court’s decision must be reversed.

### **I. The Final Plan Violated Section 52(1) of the Charter**

Section 52(1)(b) of the Charter requires districting commissions to prioritize the “fair and effective representation” of minority groups like the RHSOP Asian

community over all other considerations, save for the “one person, one vote” principle and the “fair and effective representation” of other minority communities. *See infra* Section I.A. The Commission’s Final Map violates this provision by diluting the voting power of the RHSOP Asian community, notwithstanding the availability of an alternative map that proved it was possible to protect that community’s voting power while simultaneously complying with the “one person, one vote” principle and improving the “fair and effective representation” of the other minority communities in the vicinity. Indeed, the Final Map affirmatively diluted the voting strength of the RHSOP Asian community, relative to *both* the pre-existing map and the proposed Unity Map, even though the RHSOP Asian community had grown substantially since the prior redistricting. Under any reasonable construction of the Charter’s requirements, that cannot be “fair and effective representation” to the “maximum extent practicable.” *See infra* Section I.B.

The trial court held otherwise only by construing Section 52(1) as a bare procedural requirement the Commission can satisfy simply by holding public meetings and submitting a certification. *See infra* Section I.C. In fact, the only hint at a substantive criterion in the trial court’s order was its suggestion that the Commission could satisfy the Charter’s requirements merely by confirming its chosen map’s compliance with the federal VRA—notwithstanding the fact that the

VRA’s districting framework is distinct from the framework imposed by Section 52(1) of the Charter. *See infra* Section I.D.

Holding that Section 52(1) is either a bare procedural requirement or that it simply duplicates existing federal protections tears the heart out of a voting rights protection that the Charter’s framers believed was the document’s “most important” innovation. The trial court’s decision will have devastating and far-reaching consequences for voting rights in New York City for decades to come, and cannot be permitted to stand.

A. The Charter’s Districting Criteria and Section 52(1)(b)

Section 52(1) of the Charter sets out a structured framework for the Districting Commission to apply when drawing city council district maps. It does so by laying out seven “criteria” for the Commission to “apply” “[i]n the preparation of its plan for dividing the city into districts for the election of council members.” NY City Charter § 52(1). Those criteria must be applied “to the maximum extent practicable” and “given priority in the order in which they are listed.” *Id.*

The first criteria—which receives the highest priority—reflects the “one-person, one-vote” proportionality principle enunciated by the United States Supreme Court in *Reynolds v. Sims*, 377 US 533 (1964). *See* NY City Charter § 52(1)(a). The second criteria requires the Districting Commission to “ensure the fair and effective representation of the racial and language minority groups in New York City which

are protected by the [VRA].” *Id.* § 52(1)(b). Accordingly, the only circumstance in which the Commission may disregard “fair and effective representation” of a minority group is where doing so would necessarily violate the one-person, one-vote proportionality principle—*i.e.*, where the only way to empower a minority community would be to draw a district that is too small or too large to pass the “one-person, one-vote” test. *Id.*; 1989 Preclearance Report at 22 (ADD23) (Charter requires Commission to “accord extremely high priority to fair and effective representation of racial and language minority groups,” and “[o]nly the requirement of population equality (one person, one vote) is accorded higher priority”).

Only after the Districting Commission has secured the “fair and effective representation of [] racial and language minority groups” may the Commission consider Section 52(1)’s remaining criteria—including, for example, whether to “keep intact neighborhoods and communities with established ties of common interest and association” or to draw “compact” districts that do “not cross borough or county boundaries.” NY City Charter § 52(1)(b)–(f). But because Section 52(1)’s criteria “shall be applied and given priority in the order in which they are listed,” the Districting Commission *lacks the discretion* to select a map that would preserve “communities with established ties of common interest and association” if doing so would diminish the “fair and effective representation of [] racial and language minority groups.” *Id.* § 51(1); *see also* 1989 Preclearance Report at 22 (ADD23)



("[a]ll other criteria," including "community and neighborhood integrity," are "to be given less weight" than fair and effective representation of minority groups). Similarly, Section 52(1) prohibits the Commission from prioritizing the cohesiveness of political voting blocs—*i.e.*, "geographic concentrations of voters enrolled in the same political party"—over the voting rights of minority groups. NY City Charter § 52(1)(b), (f).

The Charter's framers built in additional mechanisms to ensure that the Districting Commission prioritized "fair and effective representation" when drawing city council districts. Section 51(g) of the Charter, in particular, calls for the Districting Commission to "certify[] that . . . the criteria set forth [in Section 52(1)] have been applied in the order in which they are listed," and goes on to specifically require that certification to "set forth the manner in which the commission implemented the requirements of paragraph b of subdivision one of section fifty-two," *i.e.* the new "fair and effective representation" provision. NY City Charter §§ 51(g), 52(1)(b). That new minority-protective provision is the only criteria specifically referenced in the certification provision. *Id.* § 51(g). As the Charter's framers explained in one hearing, this language was intended "to give some greater force to [that new] criteria." *See* 1989 Preclearance Report, Vol. 15 at 68–69 (June 22, 1989 Meeting Tr.) (ADD141–142).

The Charter’s framers also elaborated on the way in which the Districting Commission should apply the new, minority-protective criteria in the 1989 Preclearance Report. There, the Charter Commission explained that Section 52(1)(b) would “require[] the Districting Commission to accord very high priority” to the “need to concentrate” minority communities “into single council districts,” even if those communities were not large enough to constitute majorities in those districts. 1989 Preclearance Report at 21 (ADD22) (emphasis added). That report even provided a prototype districting map showing how Section 52(1)(b) would force the Districting Commission to place the Asian community in “lower Manhattan” into a “single council district,” *id.*, even though the Asian population of the resulting district would be less than 35%, *see* ROA105–116.

In so doing, the Charter’s framers made clear “ensur[ing] the fair and effective representation of [] racial and language minority groups in New York city” means that districting commissions cannot simply ignore minority groups during the districting process—even if those groups are not large enough to form a majority district. The Charter, in other words, prohibits the Commission from diluting the voting power of a minority group unless keeping that group together is not “practicable” given the need to comply with the “one person, one vote” principle or protect the “fair and effective representation” of other minority groups. NY City Charter § 52(1)(b).

## B. The Final Map Violated the Charter

The Commission’s Final Map reflects an egregious violation of the Charter’s “fair and effective representation” requirement. The Map splits the RHSOP Asian community along its main thoroughfare—Liberty Avenue—thus diluting the community’s voting power by distributing its population into separate voting districts. Despite the community’s demonstrated pattern of voting as a bloc and the voluminous testimony submitted regarding the community’s ethnic and cultural ties, *see supra* 16 & 17, the Districting Commission decided to divide the neighborhood even more drastically than it had been divided in the prior iteration of the map.

Indeed, as compared to the prior map (the 2013–2022 Map), the Commission’s Final Map decreased the Asian population in every one of the relevant districts; most drastically in District 28, which went from 21.0% Asian to 16.1% Asian. *See* Table 1, *infra*. Under the Final Map, the district with the largest population of Asians is District 29. *Id.* But the Final Map achieves that concentration *not* by concentrating the RHSOP Asian community into a single district, but rather by combining a small section of it with a geographically distinct Asian community north of Forest Park.<sup>11</sup>

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<sup>11</sup> *See* Holliday Smith at al., *Get to Know Your City Council District* (District 29); ROA64 (noting the ancestry of the RHSOP Asian community).

Table 1: Asian Pop. District Concentration (Comparison)

	<b>2013–2022 Map<sup>12</sup></b>	<b>Final Map<sup>13</sup></b>	<b>Unity Map<sup>14</sup></b>
Highest Asian %	28.9% (District 29)	27.7% (District 29)	33.4% (District 32)
Second Highest Asian %	20.4% (District 28)	16.1% (District 28)	23.4% (District 29)
Third Highest Asian %	16.4% (District 32)	14.1% (District 32)	17.1% (District 28)

Setting District 29 aside, the Final Map splits the RHSOP Asian community so that the community represents less than 20% of the population in Districts 28 and 32—making it even more difficult for that community to have any influence over city politics. *See* Table 1, *supra*. This is particularly egregious in light of the evidence that the RHSOP Asian community has grown substantially since the prior round of districting. *See* ROA61, ROA66–67 (noting that “New York City’s growing Indo-Caribbean population” has “transformed” the RHSOP neighborhood).

i. *The Commission’s Determination Is Irreconcilable with the Text and Purpose of Section 52(1)(b)*

That vote dilution is flatly inconsistent with the text and purpose of Section 52(1)(b). A map that *diminishes* the voting power of a cohesive minority group obviously cannot reflect the prioritization of the “fair and effective” representation of that group “to the maximum extent practicable,” NY City Charter § 52(1),

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<sup>12</sup> ROA337–338.

<sup>13</sup> ROA330.

<sup>14</sup> ROA382.

particularly when the group has *grown* in prominence since the prior round of districting, *see supra* 36. Nor could that diminishment be justified based on the notion that the “fair and effective” representation of the Asian community would interfere with the “one person, one vote” principle, diminish the representation of another minority community, or was otherwise “impracticable.” Tellingly, neither the Commission, nor the government in litigation, has *ever* suggested that the dilution of the Asian community’s voting power could be justified on any of those grounds.

Nor could it, in light of the Unity Map—which set forth a “practicable” way of enhancing the voting power of the RHSOP Asian community, while also ensuring fair and effective representation for other minority groups. NY City Charter § 52(1). It is undisputed that the Unity Map—a map carefully drawn by a coalition of Black, Hispanic, and Asian interest groups after “deep community engagement and conversation,” *see* ROA223 (Ex. U at 1)—would have both satisfied Section 52(1)(a)’s “one-person, one-vote” criteria *and* increased the voting power of *all* minority communities in South Queens. It would have provided the RHSOP Asian community with a district in which they comprised one-third of the population (District 32), which would have given the community considerable influence over that district’s councilmember. ROA382. And it would have done so without disadvantaging neighboring minority groups: indeed, the Unity Map would have

*increased* the Black population’s share of District 28 from 37.5% to 52.8%. ROA337, ROA382; *see also* ROA213–215; Latino Justice, Press Release: Unity Map Better Alternative to Ensure Communities of Interest Remain Together (Aug. 16, 2022), <https://www.latinojustice.org/en/news/unity-map-better-alternative-ensure-communities-interest-remain-together> (discussing city-wide benefits of Unity Map). At no point during the redistricting process (or during the litigation below) did the Commission suggest that the Unity Map diminished the “fair and effective representation” of *any* minority groups in South Queens. Instead, the Commission dismissed the Unity Map without explanation, choosing instead to prioritize the cohesion of white neighborhoods in the western and central Rockaways over the voting rights of the RHSOP Asian community, *see supra* 21.

The Commission’s selection of a less minority-protective map plainly violated the Charter. At a minimum, given a range of alternative maps which all satisfy the one-person, one-vote proportionality principle by drawing districts of roughly the same size, *see* NY City Charter § 52(1)(a), Section 52(1)(b) of the Charter requires the Commission to select a map that is *most* protective of “fair and effective representation of [] racial and language minority groups,” *see id.* § 52(1)(b). To be sure, nothing in the Charter required the Commission to accept the Unity Map exactly as proposed. But the submission of an alternative map that is more minority-protective is conclusive evidence that the Commission has not “ensure[d] the fair

and effective representation of [] racial and language minority groups” “to the maximum extent practicable.” NY City Charter § 52(1); *see also Metro. Taxicab*, 18 NY3d at 1553 (agencies are “not [] free to ignore the data”).

When presented with such an alternative, the Commission must either (1) adopt it, (2) formulate a new map that is at least as minority-protective as the presented alternative, or (3) explain why the alternative cannot be adopted, either because it violates the “one-person, one-vote” criteria or because it diminishes the “fair and effective representation” of a different minority group. NY City Charter § 52(1). Rejecting the alternative for some other reason—*e.g.*, to preserve longstanding neighborhood boundaries—is, by definition, a violation of Section 52(1). Any other rule would strip Section 52(1)’s list of ordered priorities—along with its instruction that they “shall be applied and given priority in the order in which they are listed”—of any substantive meaning. *Id.*

Indeed, the Commission’s treatment of the RHSOP Asian community is irreconcilable with the Charter Commission’s *own roadmap* for how the Districting Commission should apply Section 52(1)(b) to minority communities in New York City. As explained above, the Charter Commission’s Preclearance Report stated, in no uncertain terms, that the new minority-protective criteria would force the Districting Commission to “accord very high priority” to “concentrat[ing]” minority communities into “single council districts.” 1989 Preclearance Report at 21–23

(ADD22–24). In particular, the report demonstrated that even where the community in question is not large enough to constitute a majority, Section 52(1)(b) would require the Commission to keep the community within a single district “to the maximum extent practicable,” NY City Charter § 52(1)—including by drawing a district in which the Asian community would constitute roughly one-third of the voting population, *see* 1989 Preclearance Report at 22–23 (ADD23–24); 1989 Preclearance Report, Ex. 33 (ROA108). The first Districting Commission to draw city council maps under the new Charter hewed closely to this guidance by creating an “Asian influence council district” to “maximize Asian voters,” even though they would share the district with a “largely nonminority” population. Macchiarola & Diaz, *supra*, at 51–52.

The RHSOP Asian community is similar in all relevant respects to the lower Manhattan community discussed in the Preclearance Report. Like the RHSOP Asian community, the Asian community discussed in the Preclearance Report was comprised of complex diasporas of sub-racial groups. *Compare* Macchiarola & Diaz, *supra*, at 50, *with* ROA213. Like the RHSOP Asian community, the Asian community discussed in the Preclearance Report was large but previously “never had any significant political influence” because they were “dispers[ed]” and intermingled with other racial groups in New York City. Macchiarola & Diaz, *supra*, at 50. Like the RHSOP Asian community, it was generally “impossib[le]” to



draw the city council district map in a way that would give the Asian community in lower Manhattan a majority district. *Id.* However, both the RHSOP Asian community and the Asian community discussed in the Preclearance Report *could* be drawn into a single council district in which they would comprise roughly one-third of the population. *Compare* 1989 Preclearance Report, Ex. 33 (ROA108) (concentrating Asian community in lower Manhattan yields a Chinatown district with up to 34.26% Asian population), *with* ROA382 (alternative 2022–2023 map would have resulted in a District 32 with 33.4% Asian population).

Unlike the Charter Commission or the 1991 Districting Commission that followed it, the 2022 Districting Commission refused to “concentrate” the RHSOP community “into [a] single council district[.]” 1989 Preclearance Report at 21 (ADD22). Rather than draw the RHSOP community into a district in which it could have comprised one-third of the population, the 2022 Districting Commission drew and adopted a Final Map that split the RHSOP community down its main thoroughfare. In so doing, the Commission perpetuated the effective disenfranchisement of this community and left it without a voice in city politics—at least until the next round of redistricting in 2033. *Cf. supra* 18 (discussing harms resulting from disenfranchisement, including restricted access to COVID-19 resources). That decision was a clear failure to “accord extremely high priority to

fair and effective representation of racial and language minority groups” and thus violated Section 52(1) of the Charter. 1989 Preclearance Report at 22 (ADD23).

ii. *The Commission Prioritized Neighborhood Integrity Over Minority Rights*

The reason the Commission ignored the concerns of the RHSOP Asian community—and deviated from the Charter Commission’s clear guidance—is known only to the Commission itself. Indeed, the Commission denied a FOIL request seeking the minutes or transcripts of its non-public sessions in February 2022. ROA34–35 n.45. And due to the trial court’s summary dismissal of the petition, Petitioners-Appellants had no opportunity to elicit those documents through discovery.

But the Commission’s public documents suggest that it de-prioritized the RHSOP Asian community in order to keep together a majority-white community in the western and central Rockaways. Indeed, every single version of the map the Commission considered kept this community together. ROA162 (Preliminary Plan); ROA208 (Revised Plan), ROA209 (Updated Revised Plan); *see also supra* 22. And when representatives of the RHSOP community suggested that the Commission should split this majority-white community in order to allow the majority of the RHSOP Asian community to be included in District 32, the Commission rejected the proposal out of hand—again without any explanation or justification. ROA35.

The Charter, however, prohibits the Districting Commission from prioritizing the cohesion of areas like the western and central Rockaways—*i.e.* “neighborhoods and communities with established ties of common interest”—over the “fair and effective representation” of minority groups like the RHSOP Asian community. NY City Charter § 52(1). Accordingly, to the extent the Commission prioritized the voting power of the western and central Rockaways over the interests of the RHSOP Asian community, the Commission’s Final Map violates the Charter’s explicit directives and must be set aside. At a minimum, discovery is warranted to determine the extent to which the Commission’s closed-door meeting minutes and other non-public documents establish that it improperly prioritized neighborhood integrity—or some other lower-priority criteria—over “fair and effective representation” for the RHSOP Asian community.

C. The Trial Court Misconstrued Section 52(1) as a Bare Procedural Requirement

When evaluating an Article 78 Petition challenging “[a] determination of an administrative agency,” the court’s role is to “review the [ ] determination to see if it has a rational basis in light of the [applicable] statutory scheme.” *Greer*, 158 Misc2d at 492. The court below overlooked the “statutory scheme” by declining to scrutinize the legal import of Section 52(1) or whether the Commission’s Final Map complied with it. Strikingly, the trial court’s conclusion that the Districting Commission’s Final Plan “was rationally based” was premised almost entirely on

the court’s observation that the Commission “completed the certification *process* as required.” ROA14 (emphasis added). The court, in particular, noted that “[t]here was a public comment process,” and assumed that the Commission “properly considered the testimony” of community groups. *Id.* On that basis, the court concluded that the Commission had complied with the Charter’s requirements. *Id.*

That reasoning transforms Section 52(1)(b)—the “single most important” voting rights protection under New York City law, *see* 1989 Preclearance Report, Vol. 12 at 8 (June 15, 1989 Meeting Tr.) (ADD137)—into a bare procedural requirement that will be satisfied in every case and offers no serious limitation on the Commission’s decision-making. Future Commissions will be able to satisfy the Charter simply by scheduling meetings and submitting a boilerplate certification stating that they have “evaluated” the Charter’s criteria. *See, e.g.,* ROA258–259.

That was an error of law. To be sure, Section 51 of the Charter requires the Commission to “hold one or more public hearings,” receive “objections,” and “consider[ ]” “comments received” prior to finalizing a map. NY City Charter § 51(b), (e)–(f). But that is not *all* the Charter does, as the trial court mistakenly concluded. Rather, the Charter goes much further by imposing *substantive* districting criteria under Section 52. *See id.* § 52(1). The Charter itself makes clear that this provision was intended to lay out a set of substantive requirements the Districting Commission *must* implement. Section 52(1)’s language is mandatory,

not discretionary: it states that the Commission’s plan “*shall* be established in a manner that ensures the fair and effective representation of [] racial and language minority groups,” and again states that its broader criteria “*shall* be applied and given priority in the order in which they are listed.” NY City Charter § 52(1) (emphasis added); *see also Matter of Marcus v. Wright*, 225 AD2d 447, 449 (1st Dept 1996) (“[W]hen a legislative body wishes to impart discretion to an agency, it uses the word ‘may’, in contrast to the use of the verb ‘shall’, which evinces an intent to impose mandatory duties upon the agency.”).

And, as noted above, the Charter’s framers underscored the mandatory nature of these criteria in the contemporaneous Preclearance Report, which explained that the newly-drafted Section 52(1) “*explicitly requires* the Districting Commission to accord *extremely high priority* to fair and effective representation of racial and language minority groups.” 1989 Preclearance Report at 22 (ADD23) (emphasis added). As the Charter’s framers stated during one public meeting, Section 52(1)’s purpose was to “force the redistricters” to consider minority interests in drawing district maps in the future. 1989 Preclearance Report, Vol. 8 at 132 (May 6, 1989 Meeting Tr.) (ADD76). That is flatly incompatible with the trial court’s reading, which gives the commission unfettered discretion to select a map of its choosing, subject only to modest procedural requirements.

The decision below must be reversed for that reason alone. *See Romualdo*, 37 NY3d at 1094 (reversing where lower court decision “constituted error of law”).

D. The Court Incorrectly Suggested Section 52(1) Is Coextensive with the VRA

The only hint at a substantive criteria in the trial court’s opinion was its remark that the fact the Commission retained an expert who “concluded that the [] Final Plan complied with the [VRA]” somehow supported the conclusion that the Commission had “weighed the applicable criteria set forth [the] New York City Charter.” ROA14–15. The trial court, however, was not clear as to the import of this expert’s “conclu[sion],” *i.e.*, (1) whether the court believed that the Commission’s retention of an expert who “concluded that the [] Final Plan complied with the [VRA]” was evidence that the Commission had adequately followed the Charter’s “process” of “weigh[ing] the applicable criteria,” ROA14; or (2) whether the court meant to suggest that mere compliance with the federal VRA was enough to satisfy the substantive criteria set forth in Section 52(1) of the Charter.

Either way, this was a legal error. To the extent the court relied on this expert’s “conclu[sion]” as evidence that the Commission satisfied a *procedural* requirement of “weigh[ing] the criteria,” ROA14–15, the court erred in its assumption that the Charter’s districting framework consists entirely of procedural requirements, rather than substantive standards against which a map might be evaluated. *See supra* 43–46.

If, on the other hand, the trial court intended to suggest that a map’s “compli[ance] with the [VRA]” suggests its compliance with Section 52(1) of the Charter, the court’s suggestion was legally erroneous. There is no indication in the text or drafting history that the Charter’s drafters wished to simply duplicate the existing protections of the VRA. To the contrary, the Charter’s framers left no doubt as to their intention for Section 52(1) to impose a substantive districting framework *distinct from* the VRA. The text of the Charter itself demonstrates that while the Charter’s framers were certainly aware of the VRA,<sup>15</sup> they deliberately chose to fashion an independent standard to govern districting in New York City. Indeed, Section 52(1)(b)’s “fair and effective representation” language bears no resemblance to the language in the operative provisions of the VRA. *Compare* NY City Charter § 52(1)(b), *with* 42 USC § 1973 (1989) (VRA Section 2).

That is perfectly consistent with the framers’ concern for protecting minority voting rights in a uniquely “pluralistic” metropolis. Schwarz & Lane, *supra*, at 730. The VRA was built for an entirely different purpose, *i.e.* to “address the problems raised in locales where whites in power were able to perpetuate [] or create anew [] systems of discrimination” against single minority groups. Macchiarola & Diaz,

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<sup>15</sup> The Charter Commission, in particular, knew that its revisions to the City’s governing document would need to be submitted to the DOJ for approval under Section 5 of the VRA. *See* 1989 Preclearance Report, Vol. 8 at 141 (May 6, 1989) (ADD85) (noting, in the context of a discussion of redistricting criteria, that the City “must get the prior approval of the Justice Department”).

*supra*, at 46. That law provides little guidance regarding how to deal with a city in which multiple “protected groups” “vie for representation among themselves.” *Id.* Accordingly, the Charter’s framers introduced a new, independent standard that would “force the redistricters” to prioritize the voting rights of minorities in the City “to the maximum extent practicable,” whether or not the VRA would require the same. 1989 Preclearance Report, Vol. 8 at 132 (May 6, 1989 Meeting Tr.) (ADD76); NY City Charter § 52(1).<sup>16</sup>

Indeed, the Charter’s only explicit reference to the VRA functioned to import the classifications from federal law for the purposes of evaluating *which groups* qualify for protection. *See* NY City Charter § 52(1)(b) (referring to “racial and language minority groups . . . which are protected by the United States voting rights act of nineteen hundred sixty-five, as amended”). That the Charter referenced the VRA with respect to these classifications, but *not* with respect to any substantive standard, shows that the drafters knew how to invoke the VRA—and intentionally chose not to import its substantive requirements. *See* NY Stat. § 74 (McKinney 2023) (“[T]he failure of the Legislature to include a matter within the scope of an

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<sup>16</sup> Notably, at no point during the proceedings below did the Commission suggest that Section 52(1)(b) of the Charter was coextensive with the VRA. *See generally* ROA357–376. And at oral argument, the Commission’s counsel effectively conceded that the two frameworks are not coextensive and require separate consideration. ROA410 at 28:18–20 (asserting that the Commission “did not use the federal voting rights standard to . . . consider the charter priorities”).



act may be construed as an indication that its exclusion was intended.”); *Xiang Fu He v. Troon Mgmt., Inc.*, 34 NY3d 167, 172 (2019) (explaining that specific exclusions in one part of statute doomed argument of implicit carveout, because “if the City Council meant to exclude a class of owners, it knew how to do so”).

For that reason, evidence that a districting plan “complie[s] with the Voting Rights Act,” *see* ROA14, has no relevance to the question raised here: whether the Final Plan violates the independent standard found in Section 52(1)(b) of the Charter. To the extent the trial court’s order relied on a suggestion that those two laws were coextensive, that order must be reversed. *Condon*, 128 AD3d at 529 (reversing where lower court applied wrong legal standard).

## **II. Both the Commission and the Trial Court Overlooked Basic Requirements of New York Administrative Law**

Regardless of how this Court construes Section 52(1) of the Charter or the validity of the Final Map, the Map must be vacated because the Commission refused to provide a well-reasoned justification for its effective disenfranchisement of the RHSOP Asian community—much less a justification that finds any support in the agency record. *See infra* Section II.A. The trial court overlooked this failure because it applied an overly deferential standard of review, rather than actually evaluating the Commission’s decision-making process using well-established principles of New York administrative law. *See infra* Section II.B.

A. The Commission Failed to Provide a Reasoned, Supported Justification

In New York, city and state agencies are subject to important constraints. *First*, an agency generally must provide some explanation for its decisions. “The courts should not be relegated to searching for and fashioning justifications for agency actions, based on ‘simple processes of elimination’ at the appellate review stage.” *New York State Ass’n of Cnties. v. Axelrod*, 78 NY2d 158, 168–169 (1991) (finding agency action arbitrary and capricious where “DOH failed to substantiate what . . . amounted only to a theory and assumption”); *see also Koch v. Sheehan*, 21 NY3d 697, 703–704 (2013) (finding agency decision arbitrary and capricious where “there [was] no telling” why agency made its decision). *Second*, an agency’s decision (and justification) must be rooted in the record before it. Where the agency’s stated justification is not supported by the record, that decision is arbitrary and capricious. *See, e.g., Metro. Taxicab*, 18 NY3d at 156 (reversing agency action where agency did not “present[] any justification with any support in the record for its decision”); *Matter of Jewish Mem. Hosp. v. Whalen*, 47 NY2d 331, 343 (1979) (decision arbitrary and capricious where there was “no evidentiary basis” in the record to support it); *see also Matter of Rudey v. Landmarks Preservation Comm’n*, 182 AD2d 61, 63 (1st Dept 1991) (decision arbitrary and capricious because record evidence undercut agency’s stated justification).

The recent case of *Matter of People by James v. Schofield*, which concerned the location of early voting polling sites, illustrates both of these principles. 199 AD3d 5 (3d Dept 2021). *Schofield* was an Article 78 challenge to a decision by the Rensselaer County Board of Elections to place early voting polling places in suburban locations, rather than in metropolitan areas. *Id.* at 8–9. The petitioners-appellants argued this was a violation of a statute requiring the Boards of Elections to consider a number of criteria when choosing polling locations—including population density, proximity to other polling sites, and public transportation. *Id.* at 12. The Court rejected the Board’s decision based on two observations. First, the Court criticized the Board for refusing to provide a sufficient justification for its decision at the time it was issued. The Court noted that the Board had (i) “failed to issue any contemporaneous explanation as to how it settled upon” its chosen locations, (ii) refused to provide “records documenting its deliberations,” and (iii) refused to provide a “substantive explanation when rejecting the entreaties of” those who proposed alternative locations. *Id.* The Court also explained that the Board’s “conclusory” “assertion[]” that its final decision satisfied “all state and federal guidelines” was insufficient. *Id.* (cleaned up).

Second, the Court acknowledged that the Board had “attempt[ed] to explain their actions after the fact,” but had done little more than “baldly aver[] that they had considered all the statutory factors” and had “provided few specifics as to the

information they relied upon or how any of the required factors supported their determination.” *Id.* at 12–13. The Board had stated that it had “studied a map” and implemented its “working knowledge of” transportation patterns in the area, but the Court nonetheless found these explanations “unclear.” *Id.* at 13. Ultimately, the Court concluded that the Board “did not adequately address” one of the statutory factors—and that failure “preclude[d] meaningful review of the rationality of” its determination, which “warrant[ed] annulment.” *Id.* at 14.

i. *The Commission Failed to Provide an Explanation for its Determination*

Here, the Commission failed to adhere to either of these requirements. First, as explained above, where a statute requires consideration of certain factors, the agency must supply some explanation as to *how* it applied those factors. *Schofield*, 199 AD3d at 12. A failure to do so “precludes” a court from “meaningful[ly] review[ing] [] the rationality of the [agency’s] decision.” *Matter of Figel*, 75 AD3d at 804 (criticizing “[t]he absence . . . of any mention of the statutory factors or the grounds for the denial” in issued decision). That requirement is particularly pronounced in this context because the Charter itself explicitly requires districting commissions to explain to the public “the manner in which [they] implemented the requirements of paragraph b of subdivision one of section fifty-two,” *i.e.* the Charter’s minority-protective “fair and effective representation” provision. NY City Charter § 51(g). At the very least, the agency must supply some non-conclusory,

rational explanation for how it applied the statutory scheme when its decision is challenged in an Article 78 proceeding. *Schofield*, 199 AD3d at 13.<sup>17</sup>

Here, however, the Commission issued only a boilerplate certification statement that listed eight steps the Commission purportedly took to comply with that provision, but included no specifics regarding any specifics regarding “racial or language minority groups”—much less an explanation of why the Commission felt compelled to split the RHSOP Asian community down its main thoroughfare of Liberty Avenue. ROA259. In fact, at no point during the Commission’s public meetings did it provide any explanation as to why it diluted the voting power of the RHSOP Asian community, beyond one commissioner’s passing statement that it “could not” keep that community together. ROA35. Even when challenged in litigation, the Commission failed entirely to explain how its map represents a faithful

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<sup>17</sup> The Commission’s explanation, however, must reflect its actual decision-making process: a “post hoc justification” will not do. *Patrolmen’s Benevolent Ass’n of City of New York, Inc. v. New York City Office of Collective Bargaining*, 35 Misc 3d 1234(A), 2012 WL 2018200, at \*7 (NY Sup Ct May 29, 2012) (“reject[ing]” agency’s “post hoc justification” that was not “mention[ed]” in “the body of its [initial] decision”); *see also Tinnerman v. Bd. of Educ. of City School Dist. of City of New York*, 50 AD3d 592, 593 (1st Dept 2008) (“Judicial review of the propriety of any administrative determination is limited to the grounds invoked by the agency in making its determination.”) (citation omitted). Whether the Commission’s asserted explanation is valid depends on whether it has a basis in the “administrative record,” *Matter of L&M Bus Corp. v. New York City Dept. of Educ.*, 71 AD3d 127, 136 (1st Dept 2009), which would include (for example) the minutes and transcripts of the Commission’s non-public sessions that it refused to disclose in response to Petitioners-Appellants’ FOIL request, *see* ROA34–35 n.45.

prioritization of the “fair and effective representation” over the other, lower-priority criteria. *See, e.g.*, ROA372 (defending decision solely on the basis that the “Asian community was not likely to vote in a coalition with other minority communities”); *see also infra* 54 (explaining the absence of record evidence for this conclusion). Those kinds of “assertions in a conclusory manner, lacking factual findings or bases [in] support,” are plainly insufficient under New York law. *See Schofield*, 199 AD3d at 13. And the Districting Commission’s refusal to provide a reasoned explanation for its decision deprived the RHSOP community of any means of understanding the basis of the Commission’s decision to dilute their voting rights for the next ten years.

ii. *The Commission’s Decision Finds No Support in the Record*

Second, as *Schofield* illustrates, an agency’s ultimate decision must be supported by some record evidence. The mere assertion that the agency “considered all the statutory factors” and “studied” the relevant facts is not enough. *Schofield*, 199 AD3d at 13; *see also Castle Props. Co. v. Ackerson*, 163 AD2d 785, 787 (3d Dept 1990) (overturning town planning board decision where record did not support town’s stated justifications for imposing certain development conditions; “since the record provides no evidentiary basis for these conditions imposed by the Planning Board, its decision therein was arbitrary and capricious”).

Here, other than the Districting Commission’s conclusory certification statement, *see supra* 22 (discussing this statement), there is no evidence in the record

that provides any support for the Commission’s purported determination that splitting up the RHSOP Asian community did not violate Section 52(1)(b) of the Charter. To be clear: there is not a *single* document, transcript, or recording in the record suggesting that the Commission’s Final Map was informed by its analysis of the RHSOP community or its attributes and voting patterns. Nor is there a single document that provides any insight whatsoever into why the Commission determined that it “could not” keep the RHSOP community together or illuminates the basis of that determination. *See* ROA35.

Even when challenged in litigation, the Commission was unable to point to any record evidence that supported its determination. In its briefing, for example, the Commission claimed that its expert, Dr. Lisa Handley, conducted “a thorough analysis” of “the Richmond Hill/South Ozone Asian community,” including its “voting patterns.” ROA372. But the only record evidence the Commission cited was a transcript of a public hearing during which Dr. Handley discussed the requirements of the VRA—but did not utter a single word about the Charter’s requirements or the RHSOP community. *See* ROA163–174; *see also supra* 46 (noting that the Charter’s districting criteria are distinct from the VRA).

In fact, there is no analysis whatsoever of the New York City Charter’s districting criteria in Dr. Handley’s testimony or in the reports and presentations she submitted to the Commission—all of which exclusively discuss the requirements of

the VRA. *See generally* Handley Report, *supra*; ROA163–174 (testimony), ROA175–195 (“Voting Rights Act Review of Revised Plan”); ROA196–203 (“Voting Rights Act Evaluation of NYC City Council Revised Plan”). Nor do any of Dr. Handley’s reports or testimony mention the Asian community in RHSOP. *Id.* The section of Dr. Handley’s report on “Asian Districts” in “Queens,” for example, does not mention any of the districts at issue here or otherwise discuss the size, cohesiveness, or voting history of the Asian community in that area. *See* ROA201 (analyzing Districts 20, 23, 24, 25, and 26).

The only information in those reports that has any relevance to the issue at hand are the tables of data included as appendices in Dr. Handley’s Final Report. But those tables show that the RHSOP Asian community votes overwhelmingly as a bloc. Handley Report, *supra*, at Appendix H (estimating Asian support for Felicia Singh in the 2021 City Council election as high as 98.4%). That cohesiveness supports, rather than undercuts, the need to “concentrate” the bulk of this community into a single council district so that it may have a voice in city government. 1989 Preclearance Report at 21 (ADD22).

The record, in other words, is entirely devoid of any data, testimony, facts, or other evidence that could support the Commission’s conclusory assertion that it “drew Council district lines to ensure opportunities of racial and language minority groups to participate in the political process.” ROA259 (Certification Statement).



Nor did the Commission make any attempt to explain itself—even after Petitioners-Appellants challenged its map in an Article 78 proceeding.

B. The Trial Court Applied an Overly Deferential Standard

The trial court overlooked these basic failures because it applied an overly deferential standard of review that bears no resemblance to the well-established standards under which New York courts evaluate agency decision-making. Indeed, while the trial court recited statements regarding its proper role to “ascertain whether there is a rational basis for the agency’s action” and evaluate whether there was “sound basis in reason or regard to the facts” for the Commission’s decision, *see* ROA12, the court did not actually conduct such an inquiry.

It is axiomatic that courts evaluating Article 78 petitions must actually “scrutinize” the agency’s determination in light of the applicable legal criteria. *Murphy*, 21 NY3d at 654–655; *see Matter of Acosta v. NY City Dep’t of Educ.*, 16 NY3d 309, 319 (2011) (rejecting agency decision to deny benefit without consideration of specifically enumerated factors); *Greer*, 158 Misc2d at 492 (vacating decision after finding that agency ignored a “mandatory duty” imposed by statute).<sup>18</sup> Here, the court refused to conduct even a cursory review of the Commission’s assertion that its Map complied with the Charter’s districting criteria.

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<sup>18</sup> The trial court, for example, stressed that the agency’s determination “must be accorded great weight and judicial deference.” ROA12. But “[i]t is not sufficient

Nothing in the court’s order suggests that it conducted any evaluation of whether the Commission could rationally determine that the Final Map “ensures the fair and effective representation” of the RHSOP Asian community or whether the Map reflects a rational application of the Charter’s instruction that the criteria “shall be applied and given priority in the order in which they are listed.” NY City Charter § 52(1); *see generally* ROA4–16. Strikingly, even though the Commission’s counsel was unable to “come up with” any evidence that the Commission had considered the Charter’s requirements when pressed to do so at oral argument, *see* ROA410–411 (Oral Arg. Tr. at 28:13–29:13), the Court inexplicably concluded that the “Commission carefully evaluated the [] Final Plan’s compliance” with “the New York City Charter” and had sufficiently “weighed the competing interests and all necessary requirements,” ROA14. Ultimately, the trial court simply adopted—in full—the Commission’s conclusory assertions that its Plan “did not violate the New York City Charter.” *Compare* ROA9 (summarizing Commission’s arguments), *with id.* at ROA14 (adopting arguments almost verbatim).

That analysis cannot reasonably be framed as proper judicial review of administrative agency action. New York courts have held that an agency cannot

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for [a reviewing court to] conclude[] . . . that the [decision under review] is a matter of discretion” because “[a]n arbitrary exercise of discretion is subject to judicial review.” *See Matter of Italian Sons & Daughters of Am.-Amici Lodge No. 255 v. Common Council of Buffalo*, 89 AD2d 822, 823 (4th Dept 1982).

satisfy judicial review by “baldly aver[ing] that [it] had considered all the statutory factors as part of a ‘rigorous process.’” *Schofield*, 199 AD3d at 12–13 (affirming trial court’s grant of Article 78 petition); *see also Acosta*, 16 NY3d at 320 (evaluating factual record and holding that “the ‘closer review’ purportedly applied here [by the agency] amounted to [nothing] more than a pro forma denial of petitioner’s application”); *Rivicci v. NYC Fire Dept.*, 2022 NY Slip Op. 34070, 2022 WL 17415436, at \*5–6 (NY Sup Ct 2022) (explaining that “vague and conclusory” explanation for the challenged action does not suffice). That is precisely what the Commission did in the proceedings below. *See, e.g., ROA371* (asserting that “the Plan complies with Charter § 52 in all ways”); *supra* 55 (noting that none of the Commission’s cited evidence mentions Section 52(1)(b) of the Charter or the RHSOP community). By failing to “scrutinize” the Commission’s decision-making, the trial court converted the well-established process of Article 78 review into a rubber stamp that would endorse any agency action as long as the agency “baldly averred” that it complied with the law. *Schofield*, 199 AD3d at 12–13. That is irreconcilable with New York law and alone a sufficient basis for remand.

These are no small procedural errors. “In precious few contexts are public participation and confidence, as well as governmental accountability and transparency, more important than with respect to the electoral process through which the citizenry democratically selects its representatives.” *Matter of Kosmider*

*v. Whitney*, 34 NY3d 48, 64 (2019) (Stein, J., dissenting). Here, the Districting Commission prolonged the effective disenfranchisement of a vibrant, cohesive Asian community, and refused to explain why it did so. And rather than evaluating that decision under the well-established principles of administrative law that ensure agencies reach reasoned decisions based on record evidence, the trial court rubber-stamped the Commission’s decision without any inquiry into its compliance with the Charter. The result is that a long disenfranchised minority community that vigorously lobbied their government to protect their voting rights ended up having their electoral power *fractured* still further—and they have no idea why. That is just not good enough. The trial court’s decision must be reversed.

### **CONCLUSION**

For the foregoing reasons, this Court should vacate the Commission’s Final Map with instructions to redraw the district lines in compliance with Section 52(1)(b). In the alternative, this Court should vacate the trial court’s dismissal of Petitioners-Appellants’ Article 78 petition with instructions to re-evaluate the Commission’s Final Map in light of the substantive requirements of Section 52(1)(b) of the Charter.

Dated: December 4, 2023  
New York, New York

Respectfully submitted,



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## **PRINTING SPECIFICATION STATEMENT**

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Dated: December 4, 2023

**STATEMENT PURSUANT TO CPLR 5531**

**SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION—FIRST DEPARTMENT**

---

DESI RISING UP AND MOVING, AARON FERNANDO, PAUL PERSAUD, SARWAN PERSAUD, NADIA PERSAUD, NADIRA PERSAUD, BISHAM PERSAUD, HARBHAJAN S. SURI, CHARANJIT S. SURI, DAVINDER S. SURI, SUKHVIR SINGH, SWARAN SINGH, LOVEDEEP MULTANI, PRINHPAL S. BAWA, KAMLESH TANEJA, RAJWINDER KAUR, INDERBIR SINGH, PARAMJIT KAUR AND RAJBIR SINGH,

*Petitioners-Appellants,*

—against—

NEW YORK CITY DISTRICTING COMMISSION, CHAIR DENNIS M. WALCOTT, HON. MARILYN D. GO, MARIA MATEO, JOSHUA SCHNEPS, LISA SORIN, MSGR. KEVIN SULLIVAN, KAI-KI WONG, MAF MISBAH UDDIN, MICHAEL SCHNALL, KRISTEN A. JOHNSON, YOVAN SAMUEL COLLADO, GREGORY W. KIRSCHENBAUM, MARC WURZEL, KEVIN JOHN HANRATTY, DR. DARRIN K. PORCHER, each in their capacity as members of the New York City Districting Commission, BOARD OF ELECTIONS IN THE CITY OF NEW YORK, NEW YORK STATE BOARD OF ELECTIONS,

*Respondents-Respondents.*

**New York County  
Clerk's Index  
No. 151762/2023**

**Appellate Division  
Case No.  
2023-03051**

- 
1. The index number of the case is 151762/2023.
  2. The full names of the original parties are as set forth above. There has been no change in the parties.
  3. The action was commenced in Supreme Court, New York County.
  4. The action was commenced on February 24, 2023 by service of verified petition; an order to show cause was filed on February 24, 2023.
  5. The nature and object of the action is to seek review under Article 78 of the New York Civil Practice Law and Rules to contest the certification of the New York City Districting Commission's Final Plan for failure to comply with the New York City Charter.
  6. This appeal is from a Decision and order of the Honorable Erika M. Edwards, entered in favor of Respondents, against Petitioners on May 18, 2023, which denied Petitioners' verified petition and motion by order to show cause.
  7. The appeal is on a full reproduced record.

## **ADDENDUM**



**Addendum of Authorities**\*

	<u>Page</u>
1989 Preclearance Report .....	ADD1
1989 Charter Preclearance Report, Vol. 8 (May 6, 1989 Meeting Tr.) (excerpt from pp. 126-85) .....	ADD69
1989 Charter Preclearance Report, Vol. 12 (June 15, 1989 Meeting Tr.) (excerpt from pp. 2-10) .....	ADD130
1989 Charter Preclearance Report, Vol. 15 (June 22, 1989 Meeting Tr.) .....	ADD140

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\* All the materials in this addendum are available for public viewing at the New York City Municipal Library at 31 Chambers Street, but are not otherwise publicly available on the internet or research databases. They are reproduced herein for the Court's convenience.



**NEW YORK CITY  
CHARTER  
REVISION  
COMMISSION**

Frederick A. O. Schwarz, Jr.  
Chairman

Harriet R. Michel  
Vice Chairman

Nathan Leventhal  
Secretary

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Most Rev. Joseph M. Sullivan  
David G. Trager

Eric Lane  
Counsel Executive Director

Municipal Reference and  
Research Center  
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AUG 15 1989

CHAMBERS STREET  
NEW YORK CITY

*2-17-89*

**TO: David Hunter. Esq., Civil Rights  
Division**

**FROM: Eric Lane**

**RE: Errors, August 11, 1989 letter**

**DATE: August 14, 1989**

- 
1. Page 6. The quote, at the end of the paragraph, should read "all deliberate speed" and not "all due speed." 647 F. Supp. at 1479
  2. Page 34. First word, second line from the bottom, "Court" should read "Council."

Suite 1616  
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August 11, 1989

Barry H. Weinberg, Esq.  
Acting Chief, Voting Section  
Civil Rights Division  
United States Department  
of Justice  
Washington, DC 20530

Re: SUBMISSION UNDER SECTION 5 OF  
THE VOTING RIGHTS ACT FOR  
PRECLEARANCE OF PROPOSED  
AMENDMENTS TO THE NEW YORK CITY  
CHARTER

Dear Mr. Weinberg:

This is a submission pursuant to Section 5 of the Voting Rights Act (42 U.S.C. 1973c) for preclearance of proposed amendments to the New York City Charter. The amendments will be submitted to the voters at a referendum to be held on November 7, 1989, the date of the city's next general election. This submission is timely under 28 CFR 51.22, which governs consideration of changes prior to final enactment, since the proposed charter amendments are not subject to alteration in the final approving action (the referendum), and all other actions necessary for approval have been taken. This submission consists of this letter, exhibits and appendices.

The submitting authority is the New York City Charter Revision Commission, which voted final approval of the amendments during its July 31, August 1, and August 2, 1989 meetings. The jurisdiction responsible for implementation of the amendments is the City of New

York.

Notice of this submission is being sent to a mailing list of approximately 2000 interested parties, including all organizations representing racial and language minority groups that have been in contact with the Charter Revision Commission. These notices inform the public that copies of this submission are available for inspection at the New York City Municipal Reference and Research Center (31 Chambers Street, Room 112, New York, NY 10007) and at the Charter Revision Commission's office (11 Park Place, Suite 1616, New York, NY 10007), and that copies of this letter and exhibits are available at various public libraries throughout the city. These notices also invite public comments for consideration by the Justice Department. Copies of the notice and the mailing list to which it is being sent are annexed (Exhibit 1).

This submission includes all information required by 28 CFR 51.27 ("Required Contents") and is accompanied by extensive documentation providing all pertinent information listed in 28 CFR 51.28 ("Supplemental Comments"). Accordingly, it is respectfully requested that a decision on preclearance be issued within the 60-day time period mandated by Section 5 of the Voting Rights Act and 28 CFR 51.9, in order to avoid public uncertainty about preclearance well in advance of the November 7 referendum date. Should you determine that any information required by 28 CFR 51.27 and necessary for your evaluation of this submission has been omitted, please let us know "as promptly as possible after receipt of the original submission" (28 CFR 51.37(a)).

Pursuant to 28 CFR 51.27(o), a description of litigation concerning voting practices in New York City is annexed (Exhibit 2).

If approved by referendum the charter amendments will generally take effect on January 1, 1990, with the exceptions noted in the amendments to section 1152 of the charter (Exhibit 3).

TABLE OF CONTENTS

	<u>Page</u>
I. The Charter Revision Commission . . . . .	6
II. Commission Proposals Having the Greatest Anticipated Effect upon Racial and Language Minority Groups . . . . .	8
A. Abolition of the Board of Estimate . . . . .	8
B. The New Council . . . . .	17
1. Council Enlargement . . . . .	18
2. Districting Commission and Criteria . . . . .	22
3. The 1991 Election . . . . .	23
4. Rules and Resources . . . . .	24
C. Redistribution of the Board's Powers . . . . .	25
1. Budget Adoption . . . . .	25
2. Land Use . . . . .	27
3. Franchises . . . . .	31
4. Procurement of Goods, Services, and Construction . . . . .	33
III. Other Commission Proposals Which May Have an Effect Upon Racial and Language Minority Groups . . . . .	37
A. Retention of the Citywide and Boroughwide Elected Offices Presently Comprising the Board of Estimate . . . . .	37
1. Changes in the Role of the Comptroller . . . . .	37
2. Changes in the Role of the City Council President . . . . .	39
3. Changes in the Role of the Borough Presidents . . . . .	41
B. Dual Office Holding . . . . .	42
C. Expansion of Equal Employment Opportunities for Minorities and Women . . . . .	42
D. Service Delivery . . . . .	43

IV. The Charter Revision Process: Public Education,  
Outreach, and Responsiveness . . . . . 44

V. The Decision to Schedule a Referendum  
for November 7, 1989 . . . . . 50

Conclusion . . . . . 55

List of Exhibits . . . . . A

List of Appendices . . . . . B

## I. The Charter Revision Commission

The process leading to this submission began with the appointment of a Charter Revision Commission (the Ravitch Commission) by the Mayor of the City of New York on December 16, 1986 (Exhibit 4), as the result of a federal district court decision one month earlier, holding that the voting structure of an elected governing body, the Board of Estimate, violated the constitutional principle of one person, one vote. Morris v. Board of Estimate, 647 F. Supp. 1463 (E.D.N.Y. 1986), aff'd, 831 F.2d 384 (2d Cir. 1987), aff'd, \_\_\_U.S.\_\_\_, 57 U.S.L.W. 4357 (March 22, 1989) (Exhibit 5). The decision required the city to come forward with a plan to cure the constitutional deficiency "with all due speed."

The mayor is authorized by Section 36(4) of the New York State Municipal Home Rule Law to appoint such a commission. The statutory procedures for the creation of charter revision commissions, the adoption of charter revision proposals by such commissions and the enactment of such amendments by referendum are all set forth in Section 36 of the Municipal Home Rule Law (Exhibit 6). These procedures are not subject to preclearance because they were initially enacted and last amended prior to the determination that three of the five counties within New York City (Bronx, Kings and New York) are covered jurisdictions and, in fact, prior to enactment of the Voting Rights Act. (The Municipal Home Rule Law was enacted in 1963 and Section 36 of this law was last amended in 1964.)



On October 8, 1987, the United States Court of Appeals for the Second Circuit affirmed the Morris decision and required implementation of a remedy, setting six months as a target and one year as a deadline. Morris v. Board of Estimate, supra, 831 F.2d at 393. However, just as the Ravitch Commission began a discussion of the chair's plan, after months of public hearings and discussion, the Supreme Court of the United States noted probable jurisdiction in Morris, 56 U.S.L.W. 3682 (April 4, 1988). Accordingly, on April 14, 1988, the Ravitch Commission decided to defer consideration of all proposals relating to the method of election and powers of the city's elected officials until the Supreme Court's decision (Exhibit 7). It then proceeded with its work on other subjects and presented its recommendations to the voters at the November 1988 general election. Some of its proposals required preclearance and received such preclearance on October 11, 1988 (Exhibit 8). The Commission's proposals were approved by the voters at the election.

The Ravitch Commission's term of office expired by statute (Municipal Home Rule Law Section 36(6)(e)) on November 8, 1988, at a time when Morris had not yet been decided. The substantive work of the Ravitch Commission and its processes are described in Volume One of The Report of the New York City Charter Revision Commission (Exhibit 9).

On January 19, 1989 the present Charter Revision Commission (the Schwarz Commission) was formally appointed (Exhibit 10). At its first meeting on January 20, 1989, a work schedule was

established which would allow it to place its proposals before the voters at the November 1989 general election (Exhibit 11). Two months later the Supreme Court affirmed Morris, 57 U.S.L.W. 4357 (March 22, 1989).

The Schwarz Commission consists of 15 members, the maximum permitted by statute (Municipal Home Rule Law Section 36(4)). Four of those members, including the chair, replaced members of the Ravitch Commission who chose not to continue their service. Of these four, two are members of racial and language minority groups, bringing the number of members of such groups on the Schwarz Commission to six (40% of the Commission). These individuals are Harriet R. Michel (Vice-Chair), Aida Alvarez, Amalia V. Betanzos, Simon P. Gourdine, Archibald R. Murray and Mario J. Paredes (Exhibit 12). At the commission's final meeting, all of its minority members, with only one exception (Ms. Alvarez), voiced their support for the commission's proposals. (Three non-minority members of the Commission also expressed dissent for varying reasons. The statements of all members of the Commission expressing their positions on the final charter are set forth in Appendix V, Volume 20.) (A record of all of the Commission's votes are set forth in Appendix VIII.)

II. Summary of the Commission's Amendments Having the Greatest Anticipated Effect upon Racial and Language Minority Groups

A. Abolition of the Board of Estimate

One of the most fundamental decisions in the charter revision process was whether to change the voting structure of the Board of Estimate or to transfer its functions to other governmental institutions. Both the Ravitch and Schwarz Commissions devoted extensive study to this question. Both paid particular attention to the voting rights implications of the decision, examining whether any change in the voting structure of the Board of Estimate could survive analysis under Section 2 of the Voting Rights Act and obtain preclearance pursuant to Section 5 of the Act. Both also examined the implications of such a change under the constitutional principle of one person, one vote and from a policy perspective. By the time of the Supreme Court's decision to grant review in Morris, the Ravitch Commission had begun to consider alternative proposals to the Board (Exhibit 13) and an informal consensus had developed that the Board should be abolished. The Schwarz Commission formally adopted this position on May 2, 1989 by a vote of 13-1, with all six racial and language minority group members voting in the majority (Exhibit 14).

The Board of Estimate consists of New York City's three citywide elected officials (mayor, city council president and comptroller) and the borough presidents of the city's five boroughs. The citywide officials cast two votes each and the borough presidents, who are elected in boroughwide elections, cast

one vote each. The Morris decision held that the practice of according all boroughs the same one vote, even though they vary in size from approximately 350,000 (Staten Island) to 2.2 million (Brooklyn), violates the constitutional principle of one person, one vote.

The board shares legislative power in the budget process with a 35-member city council, and has final authority over land use decisions (although if it fails to act on a land use matter, within 60 days, the prior decision of the city planning commission is deemed final). The board also has the power to approve franchises and authority over agency contracting in certain cases.

Early in its deliberations, the Ravitch Commission decided to respond to the Morris decision by placing its primary focus on the major functions of the Board of Estimate -- budgeting, land use, franchising and contracting. Its goal was to determine how each of these critical processes should best be organized and conducted.

While putting its major emphasis on this functional approach, the Commission also voted to include the more general topic of the structure and election of the Board of Estimate on its research agenda (Exhibit 15). The Commission gave extensive consideration to weighted voting, the only alternative which was consistently advanced by those who advocated restructuring the Board of Estimate. In reviewing these weighted voting plans, the Commission examined both legal considerations (primarily the constitutional requirements of equal representation and the requirements of the Voting Rights Act) and policy concerns.

The Ravitch Commission solicited opinions concerning the Voting Rights Act implications of weighted voting from several noted scholars and practitioners: Dean Norman Redlich of the New York University School of Law, Frank Parker of the Lawyers Committee for Civil Rights under Law, former U.S. Circuit Judge Arlin M. Adams, Professor David Gelfand of Tulane University Law School, Professor Katherine Butler of the University of South Carolina Law School and Professor Richard Briffault of Columbia University Law School. All concluded that there was a substantial risk that any weighted voting arrangement would run afoul of Section 2 of the Voting Rights Act and have difficulty obtaining preclearance under Section 5 (Appendix III). As summed up by the Commission's executive director and counsel:

"in analyzing weighted voting schemes and plans including large districts with heavy concentrations of minority voters under Section 5 and Section 2, all of the consultants raised the fundamental objection that such plans submerge minority voting power in New York City. In specific terms, weighted voting continues a system in which a white plurality in at least Brooklyn, Queens and citywide elections, voting as a bloc, is able to frustrate minorities' ability to participate in the political process and to elect representatives of their choice" (Exhibit 16).

Of particular concern was the historic difficulty encountered by members of racial and language minority groups in winning election to the Board of Estimate. Of the eight positions which constitute the Board, six have never been held by members of protected minority groups. They include the three citywide positions and the Borough Presidencies of Brooklyn, Queens and Staten Island. Minority group members have failed on numerous

occasions to win election to the citywide positions.

Only four years ago an African American state legislator running for Brooklyn borough president against three white candidates finished next to last with only 22% of the vote in the Democratic Primary; no minority group member is even running for Brooklyn Borough President in 1989. No minority group member has ever run for borough president in Queens or Staten Island.

Only the Manhattan and Bronx Borough Presidencies have been held at times by members of protected minority groups and, even in those boroughs, minority candidates are by no means assured of success. In 1985 an Hispanic state legislator lost the Democratic primary for Bronx Borough President to a white incumbent by a narrow margin. That incumbent had won his first election to the position in a four-way 1979 primary in which he defeated both an African American and an Hispanic candidate. Following the incumbent's resignation in 1987, an Hispanic was appointed to the office (by vote of the borough's council delegation) and, later that year, won an election for the remainder of the term. He is only the second minority group member to become Bronx Borough President; the first served a single term in the late 1960's before leaving the post to run unsuccessfully for mayor.

From 1953 to 1977 the Manhattan Borough Presidency was held by four different African Americans, the last three of whom were initially appointed to the post and then ran with the advantages of incumbency. None of the four ever faced significant opposition from a white candidate in either a primary or general election.

However, when the last of these ran unsuccessfully for mayor in 1977, a Democratic primary for borough president ensued in which an African American candidate, running against three whites, finished next to last with only 16.2% of the vote. Four years later that same candidate lost a challenge to the incumbent white. He finally succeeded in winning the post in 1985 when the incumbent ran instead for city council president. (Exhibit 17) (This year he is seeking the mayoralty, and a white council member faces no major opposition in the election to replace him as Manhattan Borough President.)

The only other political office now elected boroughwide is that of District Attorney. Only one African American has ever been elected to this position in any of the five boroughs (in the Bronx in 1988), and no Hispanic has ever become a District Attorney. From 1963-81 each borough elected two city council members at-large; during those 18 years only one minority group member was ever able to achieve election to the post (see Andrews v. Koch, 528 F. Supp. 246, 252 (E.D.N.Y. 1981) (Exhibit 18)).

Since 1987 the Board of Estimate has included two members of minority groups, the Borough President of Manhattan (who, as noted above, is about to relinquish his position), and the Borough President of the Bronx. Together they hold 18.2% of the votes on the 11-vote body. Only once before in the Board's history (from 1965-69), has minority voting strength reached even that level. From 1953-77 and 1985-87, the Board had only one minority member (9.1% of the votes), the Borough President of Manhattan. From

1977-85, the board was all white.

According to the 1980 Census, the citywide minority population of New York City is 48.02% and the citywide minority voting-age citizen population is 37.94%. Only in the Bronx, where the minority population is 66.2% and minority voting-age citizen population is 57.7%, do racial and language minorities have a strong chance of winning contested boroughwide elections. The figures for the other boroughs are: Brooklyn, 51.2% and 40.9%; Manhattan, 49.7% and 39.1%; Queens, 37.9% and 26.8%; and Staten Island, 14.8% and 11.1% (Exhibit 19). Commission estimates based upon the 1987 edition of an annual New York City housing survey suggest that the 1990 Census will reflect an increase in the city's non-white population, but not a large enough increase to alter minority electoral opportunities in citywide and boroughwide elections to a significant extent (Exhibit 20). (The New York City Board of Elections does not maintain records on the race of registered voters.)

The Schwarz and Ravitch Commissions were concerned that a board of estimate elected solely in citywide at-large and boroughwide at-large elections was vulnerable to a challenge under Section 2 of the Voting Rights Act, upon the claim that such a governmental system does not accord racial and language minorities an adequate opportunity to participate in the electoral process and to elect representatives of their choice.

The consultant to the Board of Estimate on this matter submitted to the Commission his opinion and the opinions of four



law professors. These opinions, in some respects, opposed the views of the Commission's consultants. Most of these opinions, however, also recognized the problematic nature of weighted voting and demonstrated only that alternatives to the Board of Estimate would also be subject to the standards of the Voting Rights Act (Appendix III). The overwhelming weight of expert opinion was critical of the Board's basic structure, because of the difficulties faced by members of minority groups in winning citywide at-large or boroughwide at-large elections to achieve membership on the Board. As the Director-Counsel of the NAACP Legal Defense and Educational Fund, Inc. stated: "attention should be focused on the question whether a governmental structure that perpetuates the pervasive use of city and boroughwide offices will prevent minority voters from electing their preferred candidates and from having equal influence in governmental decision making." (Exhibit 21). This same view was expressed in a Statement of the Committee on Civil Rights of the Association of the Bar of the City of New York: "To become a member of the board, one must win either a citywide or a boroughwide election. This requirement presents a severe roadblock to full participation of racial minorities in the city's government." (Exhibit 22).

The Schwarz Commission also examined, in depth, the impact of the one person, one vote doctrine upon weighted voting schemes for retaining the Board of Estimate, and determined that weighted voting would not remedy the violation of that doctrine identified by the Supreme Court in Morris.

The Commission concluded that no system of simple proportional weighted voting could be used since such plans have been found by the New York Court of Appeals to be violative of the one person, one vote requirements of both the United States and New York State Constitutions, Iannucci v Board of Supervisors, 20 N.Y. 2d 244 (1967) (Exhibit 23). It also found that the one type of weighted voting permitted by the New York courts (weighted voting which results in each member's share of the power to influence the body's decisions being equal to the share of total population) could not be applied to the Board of Estimate without changing the balance of power between the citywide representatives and some or all of the borough representatives; virtually disenfranchising Staten Island; and/or creating substantial population deviations. For the Commission, however, all of this became relatively moot after the Supreme Court's Morris decision in which the Court rejected, for use in evaluating the Board of Estimate's compliance with the one person, one vote standard, the very method of establishing such relationships which had been required by the New York courts, the "Banzhaf method." The Commission also felt that weighted voting could, at best, weight votes but could not weight the ability of elected officials to otherwise represent and serve their districts. An analysis of these matters was presented to the Commission by its Chair at its May 2, 1989 meeting after which the Commission supported his conclusion by a 13-1 vote (Exhibit 24).

In view of the Voting Rights Act and one person, one vote concerns discussed above, the Schwarz Commission determined that

weighted voting would perpetuate unrepresentative government and was therefore an inappropriate response to Morris. Further, members of the Commission and various witnesses raised policy questions about the governmental value of the Board of Estimate (Exhibit 25), particularly with respect to its involvement in the contract process (pages 35 to 36, infra).

**B. The New Council**

The present city council has 35 single-member districts, which were precleared in 1982 after considerable controversy. The districting plan which was finally precleared included nine districts with minority populations of 80% or more and three additional districts with minority populations between 71.6% and 74%.

Thus, 34.3% of the votes in the council are cast by individuals representing districts which have minority group populations of 71% or more. On the Board of Estimate, no member represents an entity (the entire city or one of its five boroughs) with a minority population of more than 67% and only one (the Bronx Borough President) represents an entity with a minority population of more than 51% (Exhibit 26).

Similar disparities also exist in the actual election of members of minority groups. In the elections held under the 1982 redistricting, members of minority groups were elected to the council from the nine districts with minority populations of 80% or more. Accordingly, 25.7% of the current council members (nine of 35) are members of minority groups. Compared to the Board of

Estimate, which has never had more than 18.2% minority voting strength and frequently had less, the present council is New York City's most representative body and provides the greatest opportunity for minority group members to elect candidates of their choice.

#### 1. Council Enlargement

Despite its conclusion that the present council is more representative than the Board of Estimate, the Commission believed that a larger council, with smaller single-member districts, was desirable to provide enhanced electoral opportunities for the city's minority groups.

The Commission has proposed a city council of 51 members, thereby reducing the average population per district from approximately 202,000 to 139,000. In arriving at this decision, after more than two years of public meetings and hearings (pages 44 to 50, infra), the Commission sought to balance four goals: (1) to enhance opportunities for minority voters to elect candidates of their choice, (2) to increase the number of minority council members, (3) to maintain a council of manageable size in which all members can meaningfully participate and (4) to increase council members' responsiveness by making their constituencies smaller, without making those constituencies so small as to foster parochialism (Exhibit 27).

In the Commission's judgment, a 51-seat council, conservatively based on the results of the 1980 Census, but districted to maximize minority opportunities, would increase the proportion of districts

with more than 80% minority population from 25.7% on the present council (9 of 35 districts) to 35.3% (18 of 51 districts), and districts with 75-79% minority population from none on the present council to 5.9% (three additional districts). The proportion of districts with 70-74% minority population would decrease from 8.6% on the present council (3 of 35 districts, none of which have elected minority group council members) to 2% (1 of 51 districts). (Neither the old nor the prototype 51-district council have any districts with 65-69% minority population.) (Exhibit 28)

Even if only the 18 districts with 80% or more minority population elected minority council members, the Commission's plan would double the number of such council members from nine to 18--a 100% expansion of minority representation on a council expanded in size by 45.7% (from 35 to 51). The result would necessarily be a vast increase in the power of the council's minority representation.

The Commission's prototype of a 51-district system, as set forth in data and maps in Exhibit 28, is based upon 1980 Census data. The Commission is not seeking preclearance of these particular districts. They are presented for informational purposes only and are not being proposed for adoption. The actual districts will be drawn by a districting commission (page 22, *infra*) on the basis of the 1990 Census. This prototype districting plan is presented only to establish that even under the 1980 Census, a 51-member council would significantly enhance minority group opportunities. Such opportunities will be further enhanced by the use of 1990 Census data.

There has been some controversy over the Commission's proposal to enlarge the size of the council and over the particular size it has chosen. Initially some council members, including minority members, argued that an enlargement of the council would not result in an increase in the proportion of districts in which members of minority groups would have the opportunity to elect council members of their choice. However, the overwhelming view of other representatives of the minority communities has been in favor of increasing the size of the council, in order to increase minority opportunities (Exhibit 29).

Some of these individuals and groups have, however, argued in favor of a larger council than that recommended by the Commission. Principal among them, at one time, was Dr. Luther Blake of the Coalition of African American and Latinos for a Just City Government. He testified in favor of a 59-district council at the June 1, 1989 hearing (Exhibit 30). As noted above, the Commission spent considerable time reviewing the issue of council size and at its June 27, 1989 meeting decided again to adopt the 51-district council as part of its preliminary proposals (Exhibit 31). Subsequently, at the July 21, 1989 hearing, Dr. Blake expressed support for the Commission's plan (Exhibit 32).

In addition, some representatives of several Asian American organizations in lower Manhattan and Flushing, Queens testified that a 59-district council would provide their communities with a better chance to elect representatives of their choice than a 51-district council. If, however, the demographic estimates and projections

presented to the Commission by these organizations are reasonably accurate, the Districting Commission should, as part of a 51-district plan based on the results of the 1990 census, be able to establish a council district in each of these areas in which Asian Americans would have a reasonable opportunity to elect council members of their choice. For these two communities, the difference between the size of the districts in 51 and 59 district plans is much less important than the need to concentrate each of these two communities into single council districts (Exhibit 33). (As noted on page 22, infra, the proposed charter requires the Districting Commission to accord very high priority to this need.)

In considering the options available for structuring the city government, the Commission also evaluated the possibility of creating a bicameral city council with a nineteen-member upper house. However, that plan was offered only on the condition that, before it could be discussed from a policy perspective, it must be shown to enhance the opportunities of minority voters to participate in and influence the political process (Exhibit 34). The commission heard considerable opposition to this proposal (Exhibit 35), and its own analysis found that the smaller second legislative body might, in fact, dilute minority representation (Exhibit 36). The Commission also briefly considered adding the borough presidents to the enlarged council, but abandoned the idea out of the concern that boroughwide elected council member (i.e. borough presidents) would dominate the council and diminish the power of the district members (Exhibit 37).

## 2. Districting Commission and Criteria

To ensure that council district lines are drawn to maximize the electoral opportunities of racial and language minority groups, the Commission has provided a meticulously crafted districting system. The Districting Commission established by the existing Charter would be expanded in size and appointed by more diverse sources. More importantly, the new charter would require that the Districting Commission include members of protected minority groups in proportion, as close as practicable, to their population in the city. The various appointing officials would be required to establish a joint screening and selection process for ensuring compliance with this requirement. (proposed section 50)

Furthermore, the proposed charter explicitly requires the Districting Commission to accord extremely high priority to fair and effective representation of racial and language minority groups protected by the Voting Rights Act. Only the requirement of population equality (one person, one vote) is accorded higher priority on the list of criteria to be followed by the Commission. All other criteria (community and neighborhood integrity, compactness and borough integrity) are to be given less weight than fair and effective representation of minorities (proposed section 52).



### 3. The 1991 Election

The proposed Charter also provides that the existing 35-member council elected in the 1989 general municipal election would serve for only two years instead of the usual four in order to effect the transition to the larger, more representative council as soon as possible (proposed section 1152). (Under Article XIII, Section 8 of the New York State Constitution, municipal general elections may only be held in odd-numbered years (Exhibit 38).) The Commission's preliminary and revised proposals anticipated election of a redistricted and enlarged council for the first time in 1993. The Commission, however, revised this plan during its final meetings in response to concerns expressed by Vice-Chair Michel and considerable public comment, particularly from members of minority groups (Exhibit 39). As stated in a letter dated August 1, 1989 to the Chair from the Director-Counsel of the NAACP Legal Defense and Educational Fund, Inc.:

"[T]o the extent the proposed revisions expand the powers of the city council and increase its size, they promote the purposes of the Voting Rights Act. On the other hand, a failure to provide for elections in 1991 of the expanded city council would frustrate the purposes of the Act. We are therefore pleased to see that the Commission has voted to provide for the election in 1991 of the expanded city council." (Exhibit 40).

The new 51-member council, elected in 1991, would serve a two year term with the next election to take place in 1993 for a four year term (the term of council members under the present charter is four years). The 1991 Districting Commission would be required to use the 1990 Census results, which are required by Title 13, Section

141 of the U.S. Code to be reported by April 1, 1991 for districting purposes ("public law tapes") (proposed section 1152). Some or all council district lines would be redrawn for the 1993 election, if necessary, to reflect adjustments of the Census figures made after the April 1991 report.

#### 4. Rules and Resources

The Commission has also adopted several proposals for democratizing the council. It has placed in the charter certain rules of the council concerning the elections of committee chairs and committee actions on local laws (proposed section 46), has required the approval of the council for stipends to members in leadership positions (proposed section 26) and has created for the use of individual council members, among others, an independent budget office (proposed chapter 5-A). Many groups advocated the establishment of this office to offset the authority of the mayor's Office of Management and Budget and to provide a resource for individual council members, independent from the authority of the council majority leader (Exhibit 41).

This office would provide council members and other officials with information on actual and estimated city revenues, the fiscal implications of all proposed local laws, and any other fiscal information or analysis requested. All city agencies would be required to provide the Independent Budget Office with information requested by it. The director of this Office would be chosen jointly by a representative of the city council, the comptroller, a representative of the borough presidents and the council

president. The appointment would be made upon the recommendation of a screening committee of private citizens with expertise in economics, finance and public administration.

### **C. Redistribution of the Board's Powers**

In designing proposals for restructuring the processes in which the Board of Estimate played a role, the Commission's basic goals were: (1) to achieve a more classical legislative/executive model of government with the opportunity for expanded policy debate in the legislative branch by more and varied people, increased efficiency in the executive branch and the corresponding checks and balances that generally attend such systems, (2) to rationalize the governmental process by having policy decisions made prior to the process of executive implementation rather than on a case by case basis at the end of such process, (3) to enhance effective minority group influence in the government, and (4) to provide for additional decentralization in decision making to address the alienation expressed by residents of some parts of the city.

#### **1. Budget Adoption**

Under New York City's current charter, the mayor is responsible for submitting a proposed budget while the responsibility for budget adoption rests with the council and Board of Estimate. For this purpose these two bodies function as two houses of a bicameral legislature (sections 111, 115 and 216). (Since the mayor presents the budget, he does not vote on the budget as a member the Board of Estimate. Accordingly, the present minority representation on the Board for budget votes is slightly higher (22.2%) than the 18.2%

that exists for other matters. On the other hand, the Board's non-compliance with the one person, one vote standard is further aggravated by removing the mayor's two citywide votes from the Board on these matters (see Supreme Court decision in Morris, Exhibit 5, supra).

The proposed revisions would give the council sole authority to adopt and modify the budget. This reflects the Commission's judgment that the council, as the city's legislative body and as its most representative governing body, should be responsible for setting city policy and should not have to share that responsibility with a less representative, quasi-legislative -- quasi-executive body.

The mayor is presently responsible for annually preparing and proposing the budget. That power remains largely intact under the Commission's revisions. However, the Commission determined that some decentralization of the mayor's powers in this area was warranted, and therefore adopted a process under which the borough presidents would participate with the mayor in developing and proposing a portion of the budget. In essence, the five borough presidents would be able, in the aggregate, to propose 5% of the non-mandatory increases in the city's expense budget and 5% of the capital budget. The exact sum to be proposed by each borough president would be determined by formulae. The mayor must include each borough presidents' proposals of this type in the executive budget (proposed section 103(2)), and may not veto or disapprove any of these items if they are adopted by the council. (The mayor may

however, comment and advise the council as to the merits and demerits of these provisions (proposed subdivision 13 of section 78)). In addition, the borough presidents would be authorized to propose modifications to other portions of the budget to the mayor and to require council action on such proposals if the mayor does not accept them.

The council has total and sole authority to adopt the budget, with or without any amendments the mayor may suggest to the borough budget proposals (proposed section 81).

## 2. Land Use

"Land use issues are often the most bitterly contested issues in city government, given the density of the city, the limited space available for competing uses, and the millions of dollars at stake in approval or denial of proposed projects. Yet land use power is at present vested in a body with limited, highly diluted minority voting strength" (Association of the Bar of the City of New York, Committee on Civil Rights, Statement on New York City Charter Revision (Exhibit 22, supra).

Under the current charter the Board of Estimate is the only elected body with power to review and approve land use decisions. The council has no role in the land use review process. A seven-member city planning commission, appointed by the mayor with the advice and consent of the council (except for the chair), passes on significant land use decisions initially and the Board has the power to approve, modify, or disapprove such decisions (sections 197-a, 197-c and 200). The failure of the Board to act within 60

days is deemed an approval of the city planning commission's decision (section 197-c(h)).

The Ravitch and Schwarz Commissions spent considerable time and effort on land use issues. While the initial proposals of Richard Ravitch substantially limited the opportunity for council participation in land use decisions, the final proposals of the Schwarz Commission, arrived at after extensive discussion, numerous meetings and public hearings (pages 44 to 50, *infra*), would transfer to the new council the opportunity to review all decisions of the city planning commission now subject to review by the Board of Estimate (Exhibit 42).

The basic change contemplated by the proposed charter amendments is to substitute the council for the Board as the final decision-maker in land use. The amendments also would increase the size of the city planning commission to thirteen members, with the mayor appointing seven (including the Chair) and each borough president and the city council president appointing one. All city planning commission appointments, except for the chair, would still require the advice and consent of the council.

Under the revised charter, there would be three different procedures by which land use decisions of the city planning commission would be subject to review by the council. All zoning changes, housing and urban renewal plans and projects, and plans for the development and growth of the city, as well as most dispositions of city-owned residential property, would be automatically referred to the council for review upon approval by

the city planning commission (proposed section 197-d).

Other decisions of the city planning commission, such as the approvals of the selection of sites for the city's capital projects (including such unpopular projects as jails, incinerators, and shelters for the homeless), special zoning permits, city map changes and dispositions of city-owned non-residential property, would be subject to review by the council in two different ways: (1) upon objection of the affected borough president and community board or (2) upon a majority vote of the council (proposed section 197-d).

Sending the first category of matters automatically to the council will ensure that the legislative body of the city would review land use decisions that are legislative in nature, and would also review dispositions of city-owned residential property which tend to have particularly significant impacts on low-income areas, where the city owns large numbers of residential properties as a result of tax foreclosures. (The significance of this latter point was made clear to the Commission by testimony and comments of representatives of minority communities (Exhibit 43)).

The remaining land use jurisdiction of the council would consist generally of site-specific, administrative matters which do not merit the attention of a 51-member legislature in many cases, but may be reviewed by the council if the matter generates public controversy or are of particular significance. A decision of the city planning commission would be subject to review if it is opposed by both the affected borough president and community board or if the council by majority vote deems it sufficiently important to justify

council review.

Under the proposal, the council would have fifty days to approve or disapprove a decision of the city planning commission and sixty-five days if it proposes to modify such a decision. Any action by the council on a land use matter, like all local laws, would be subject to veto by the mayor, and any such veto would be subject to override by a two-thirds vote of the council. This veto and override provision would carry forward the current citywide/local balance on the Board of Estimate, since two-thirds of the non-mayoral votes on the Board (i.e., six out of nine) are now required to muster a majority against the mayor on the eleven-vote Board. However, because racial and language minority groups would enjoy far greater representation on the council than they have had on the Board, they would be able to exert more influence if conflict with the mayor develops on a land use matter.

The council's power over the selection of sites for City capital projects would also be enhanced by the ability of a 26-member majority to defeat items in the capital budget.

A key and new land use proposal of the Commission, although not one which involves the current powers of the Board of Estimate or the council, is the "Fair Share Siting Plan" (proposed sections 203 and 204), which is designed to enhance the equitable distribution of both desired and undesired city facilities among communities in the city. In the course of its research, the Commission found that the city generally chooses sites for its projects on a case-by-case basis, with low income neighborhoods



often receiving a disproportionate share of undesired facilities (Exhibit 44). The "Fair Share Plan" requires the creation of criteria for distributing the benefits and burdens of city facilities, requires city agencies to apply the criteria in preparing an annual needs statement which lists by borough and community the new city facilities proposed for the ensuing two years, and requires that the borough presidents be given an opportunity to propose sites for the facilities (proposed section 204).

A more detailed description of the city's land use review procedure under both the current charter and the proposed revisions is appended (Exhibit 45).

### 3. Franchises

A franchise is a grant to a private party that permits use of real property of the city to provide a public service. Under the present charter all franchise contracts must be approved by a three-fourths vote of the Board of Estimate and by the mayor (sections 371-373).

In developing a new procedure for awarding franchises, the Commission would give the council the critical role of determining what types of franchises should be granted and would assign to the executive the administrative task of selecting franchisees and negotiating contracts. This decision is consistent with the Commission's goal of rationalizing the governmental process by having policy decisions made prior to executive branch implementation.

Under the proposed charter, a particular franchise could only be solicited pursuant to the terms, conditions and procedural requirements of an authorizing resolution adopted by the council. Such a resolution would be required to set forth the type of franchise to be granted, the procedure for soliciting proposals for the type of franchise and the terms and conditions for the type of franchise (proposed section 363). If a proposed franchise has land use impacts, the request for proposals (RFP) for a franchise would be subject to review and approval pursuant to the city's uniform land use review procedure (ULURP) including review by the city planning commission and the council. No such RFP could be issued prior to such approval.

After an agency issues an RFP, evaluates the responses, and selects a proposed franchisee pursuant to the criteria set forth in the authorizing resolution and the RFP, the specific franchise agreement would be subject to review and approval by a franchise and concession review committee and, as at present, by the mayor. The franchise and concession review committee would consist of one representative each of the mayor, the corporation counsel, the director of the Office of Management and Budget, an additional appointee of the mayor, the comptroller and the affected borough president or presidents (proposed section 372). A vote of five members of the committee would be required to approve a franchise (proposed section 373).

#### 4. Procurement of Goods, Services and Construction

Procurement of goods, services and construction in the City of New York is presently governed by charter provisions which establish competitive sealed bidding, with award to the lowest responsible bidder as the primary method of procurement (section 343(b)). Sixty percent of all funds for city contracts are expended by agencies pursuant to this method. No revision of this method is recommended.

However, the present charter also recognizes certain exceptions to competitive sealed bidding, principally for "special case" contracts, a term undefined by the charter, and consultant contracts, for which competitive sealed bidding is inappropriate. Special case and consultant contracts are primarily contracts let in response to requests for proposals or on a sole source basis. Such methods may be used by agencies only upon the approval of the Board of Estimate (sections 343(a), 349), which, in practice, almost always comes after the agency has chosen such an alternative method and frequently after it has chosen a vendor. The Commission found this approval process (1) to have very little impact on city policy, since action by the Board of Estimate is limited to reviewing individual contracts, and occurs at the end of the process, and (2) undermines the integrity of the procurement process, by diffusing accountability for procurement decisions among the eight members of the board. The Commission's proposals would replace this process with one in which policy decisions would be made by the legislative branch before implementation and accountability for implementation would be clearly fixed with the city's chief executive.

This would be done by requiring the council to approve, modify or reject under its legislative power a new and detailed contract budget, specifying whatever terms and conditions it determines to be appropriate for expense budget programs to be implemented by contract, before any procurement of contractual services could be initiated by city agencies (proposed section 104). The council would also be authorized to reduce, omit, or increase appropriations for any category of spending for contractual services proposed by the mayor or to add appropriations for additional categories of contractual services. Similarly, the council would be authorized to make similar changes in the capital budget which is a project-based document with greater detail than the expense budget or even the proposed contract budget. Thereafter, city agencies would be permitted to implement authorized procurements in accordance with the procurement policies specified in the charter and in the rules promulgated by a proposed new five-member procurement policy board. Three members of this board would be appointed by the mayor and two by the comptroller (proposed section 341). After a contract has been let, both the council, the borough presidents and the Comptroller would be authorized to monitor the performance of the services provided pursuant to such contracts (proposed sections 30, 93 and 363).

This process reflects the Commission's view that procurement implementation, pursuant to substantive policy decisions by the Court and consistent with the procurement policies established by the charter and the procurement policy board, is an executive

function. The mayor should be accountable for procurement implementation by city agencies. While the council should be responsible for setting policy regarding the use of contracting in particular substantive areas and for the terms and conditions which should be followed, it should not be involved in the selection of vendors or in the approval of the terms of individual contracts for the thousands of procurements carried out by city agencies each year (Exhibit 46).

The argument for mayoral accountability was made by various witnesses who criticized the role of the Board of Estimate in the contracting process (Exhibit 47) and by the Institute of Public Administration in a 1987 report entitled "Contracting in New York City Government" (Exhibit 48). Testimony and submissions by the author of that report (Exhibit 49) argued that over the years the Board's role has resulted in agency preoccupation with securing the Board's approval of contracts, that as a result the agencies have devoted less attention to the methods used in soliciting and selecting contractors, and that approving contracts at the end of the agency process is an inappropriate time to attempt to establish policy.

On these bases both the Ravitch and Schwarz Commissions considered and rejected proposals to require the council (or any other legislative body) to approve individual contracts (Exhibit 50). This decision was also based upon testimony presented by the State Comptroller, specialists in governmental procurement, city administrators, elected officials and citizens that procurement is

an executive function (Exhibit 51).

The Commission has also adopted several additional proposals involving procurement which were advocated by members of minority groups. One proposal would enhance opportunities for minority-owned businesses to participate in the procurement process. Under this proposal, each city agency would be required to establish reasonable measures and procedures to assure the meaningful participation by such businesses in the agency's procurement process and to provide financial, technical and managerial assistance (proposed section 353). In addition, an Office of Economic and Financial Opportunity would be established to assist, guide and monitor the work of city agencies in implementing these requirements (proposed section 352) (Exhibit 52).

Under a second proposal, an Office of Labor Services would be established to "establish and enforce a citywide program to ensure meaningful employment participation by minority group members and women" in entities with which the city contracts (proposed section 360(3)). A similar office presently exists pursuant to mayoral executive order.

The charter also specifies that a substantial violation of these provisions and/or a violation of the standards developed by these offices would be a basis for disqualifying a contractor from doing business with the city (proposed section 355(e)).

III. Additional Provisions of the Charter Having Anticipated Effect Upon Racial and Language Minority Groups

A. Retention of Citywide and Boroughwide Elected Offices Comprising the Board of Estimate

Despite its decision to abolish the Board of Estimate, the Commission decided to retain the offices of comptroller, city council president and borough president, with some changes in the powers and responsibilities of each office.

1. Changes in the Role of the Comptroller

Presently, the comptroller is elected citywide for a four-year term and is second in line, after the president of the council, to succeed to the mayoralty. The comptroller also serves as a member of the Board of Estimate (sections 10 (a), 61, 91). The comptroller's powers include investigating all matters affecting the finances of the city; conducting financial and management audits of city agencies; settling and adjusting all claims in favor of or against the city; managing the city's trust funds; keeping the city's accounts; publishing an annual financial statement for the city; establishing for the comptroller's office and city agencies a uniform system of accounting and reporting; and registering contracts (section 93).

The Commission's decision to abolish the Board of Estimate has eliminated some of the powers of this citywide at-large elected office, which has never been held by a member of a minority group. That decision also puts an end to a disturbing conflict which is built into the comptroller's dual role as (1) policy maker-legislator on the Board of Estimate and (2) overseer of the

city's fiscal and management affairs. The Commission received testimony that this dual role created both a general conflict between the comptroller's political focus at the Board and fiscal focus as comptroller, and more particular conflicts inherent in voting on specific items which the comptroller might later need to audit (Exhibit 53). The comptroller's dual role also conflicts with one of the principal general standards set forth by the United States General Accounting Office in Government Auditing Standards: "In all matters relating to the audit work, the audit organization ... should be free from ... impairments to independence." Such impairments include previous responsibility of the auditor for decision-making affecting the entity or program being audited (Exhibit 54).

Under the proposed charter, the comptroller's auditing powers would be strengthened by broadening the auditing jurisdiction of the office and requiring that city agencies be audited in a regular cycle, and that the comptroller deliver a annual report to the mayor and council summarizing these audits, the corrective actions recommended and actually taken, and any recommendations of the comptroller for additional corrective actions (proposed section 93 (c), (f)). The proposal also gives the comptroller significant powers to review and analyze proposed budgets and to make this expertise available to other participants in the budgetary process (proposed section 64). The comptroller's power to oversee the city's contracting process is also strengthened as the comptroller is required to audit agency contracting processes (proposed section



93 (e)), and to play an expanded role in the registration of contracts (proposed section 358). This strengthening of the comptroller's powers in registering contracts was proposed to the Commission by several officials and citizen groups at the public hearings (Exhibit 55).

2. Changes in the Role of the Council President

The president of the council, currently elected citywide for a four-year term, stands first in line of succession to the mayor, and serves as a member of the Board of Estimate (sections 10(a), 23 and 61). The council president presides over the council's meetings but cannot vote except to break a tie (section 23(e)). In addition, the charter accords to the council president power to oversee the coordination of citywide citizen information and service complaint programs, to review recurring multi-borough or citywide complaints, and to make proposals to improve these processes (section 23(f)).

Many powers of this citywide at-large elected office, which has never been filled by a member of a minority group, would be eliminated by virtue of the Commission's decision to abolish the Board of Estimate. The proposed charter instead retains the council president as an executive official with power to balance and check the power of the mayor. The council president would become the city's public advocate, receiving and attempting to resolve individual complaints regarding the administrative acts of city agencies. The council president could conduct investigations of such complaints (subject to the exceptions provided in proposed section 23 (f)) and issue reports and recommendations to the mayor

and council (proposed section 24(f),(g)). The council president would also review and report to the mayor and council on the performance of city agencies, with particular attention given to the areas of decentralized service delivery, agency information and service complaint programs, agency responsiveness to requests for information, and official and agency compliance with the provisions of the charter (proposed section 24(h), (i)).

The office of council president was the subject of considerable discussion during the charter revision process (Exhibit 56). Some commission members considered the position unnecessary and advocated eliminating it entirely, replacing it with a vice-mayor elected on a joint ticket with the mayor. The advocates of this position argued that ticket balancing would result, thus increasing minority electoral opportunities. Others believed that this theory was unsound, and that it was preferable for minorities to seek citywide office independently rather than as part of so-called "balanced" tickets. Some members supported having both a separately elected city council president and a vice-mayor (Exhibit 57). This issue was debated by the Commission on several occasions, with a clear majority always supporting the retention of the city council president. Of the Commission's six minority group members, one consistently advocated having a vice-mayor instead of a city council president, one supported having both offices, and the other four favored an independently elected city council president rather than a vice-mayor. The Commission's final proposal for continuation and re-shaping of the office of council president without a vice-mayor

passed by a vote of 9-4 at the May 6, 1989 meeting and again by a vote of 9-4-1 at the July 31, 1989 meeting. On these occasions, all of the minority members of the Commission, except Ms. Alvarez, voted in favor of retaining the office (Exhibit 58).

3. Changes in the Role of the Borough Presidents

The borough presidents are presently elected for four-year terms by the voters of their respective boroughs. The current charter assigns some powers to these borough-wide elected officials as individuals, but most of their powers derive from their positions as members of the Board of Estimate. The new charter eliminates these powers by abolishing the Board of Estimate. However, the proposed charter assigns certain new powers to the borough presidents as executives with responsibility for formulating budgets, as described on pages 25 to 27, supra, participating in land use decisions, as described on pages 27 to 31, supra, and overseeing service delivery in their boroughs, as described on page 43, infra.

Each borough president would also be required to issue a strategic policy statement every four years outlining goals and strategies for the borough (proposed sections 17, 82(14)).

Finally, once a year, after budget adoption, borough presidents would work with designated agency heads to determine the allocation of personnel and resources for key city services in their boroughs (proposed section 106(f)).

**B. Dual Office Holding**

The Commission proposes to prohibit citywide and borough-wide elected officials and key appointed officials in the city government (the deputy mayors, commissioners of city agencies and others with "substantial policy discretion") from serving in a significant party office (proposed section 2604(b)(15)).

This decision is based on the Commission's judgment that such a proposal would result in a desirable diffusion of political power in what is essentially a one-party city, and in the untwisting of an inherent conflict of interest between high-level elected or appointed offices and party offices.

The Commission initially voted to bar city council members from holding significant party offices, but deleted this provision because, in the judgment of a majority of the members, it would have impacted disproportionately upon council members of racial and language minority groups. Seven of the nine minority council members on the existing council are Democratic district leaders in their communities, and the Commission chose not to interfere with their ability to serve in this capacity (Exhibit 59).

**C. Expansion of Employment Opportunities for Minorities and Women**

In response to letters and testimony from a variety of civil rights and advocacy groups, the commission adopted several proposals relating to fair employment practices by the city. The existing charter prohibitions against discrimination would be strengthened by adding a specific provision prohibiting discrimination in the

setting of wages (proposed section 810).

Additionally, the proposed charter would require city agencies to establish and enforce measures and programs to ensure "a fair and effective affirmative employment plan" (proposed section 814) and would create a new Equal Employment Practices Commission to review the employment practices and procedures of city agencies, assist such agencies in their efforts to increase employment by minority group members and women, make policy, legislative and budgetary recommendations to ensure equal employment opportunity, and report annually to the mayor and council on the efforts by and effectiveness of agencies to promote employment by minority group members and women (proposed chapter 36).

#### D. Service Delivery

Two of the Commission's proposals on service delivery would have a direct impact on members of minority groups, although neither relates to the shift of any power between institutions or elected officials. The first is to create in the charter an Office of the Language Services Coordinator (proposed section 15(c)). While this office presently exists under executive order, the Commission believed that establishing it in the charter would give it greater significance, as well as protection.

The second proposal would require the mayor to issue an annual report -- timed in order to fit into the formulation of budget priorities -- comparing the quality and quantity of key services and social indicators (1) with national or other generally recognized standards, and (2) among the city's communities. This, for example,

would require the comparison of indicia of city health care such as low birth weight babies, among city communities, and with national standards (proposed section 17). This proposal is the result of extensive meetings with and the testimony of advocates committed to the improvement of health care in minority communities (Exhibit 60). After hearing their views, the Commission decided to adopt the idea more generally.

#### IV. The Charter Revision Process: Public Education, Outreach and Responsiveness

The charter amendments for which preclearance is sought are the product of an extensive series of public hearings, public meetings, and consultations with numerous groups and individuals over a period of more than two and one-half years. (The impact of many groups and individuals on specific proposals has already been discussed.)

While the Ravitch and Schwarz Commissions were appointed as a consequence of the Morris case, both commissions were required by statute to "review the entire charter." (Municipal Home Rule Law Section 36(5) (a)). Accordingly, the Ravitch Commission decided soon after its appointment in December 1986 that it would review all major functions of the Board of Estimate, to determine how those responsibilities would be most effectively structured given the political, social, economic, and organizational realities of governing the largest city in the United States.

The Commission decided that by selecting governmental structures and processes that would pass muster under the Equal

Protection Clause, the Voting Rights Act and other relevant federal and state constitutional and statutory provisions, it would attempt to improve the quality of the city's governance from several perspectives. This decision of the Commission has been widely praised, as illustrated by a July 21, 1989 statement of Dr. Roscoe C. Brown, Jr., President of the One Hundred Black Men, Inc., a civic leadership organization, and President of the Bronx Community College:

"The Charter Revision Commission under the able chairmanship of Frederick A. O. Schwarz, Jr., is to be commended for the extensive opportunities that have been provided for various segments of the New York City community to comment on their proposals. The Commission has been very responsive to the many suggestions and criticisms that have been directed to various aspects of revision of the Charter. While the catalyst for charter revision was court decisions concerning the Board of Estimate, the Commission has wisely chosen to address other aspects of City governance, with the view of improving the efficiency and responsiveness of government to the people of the City of New York." (Exhibit 61)

The proposed revision of the charter is the result of a process which commenced in the early spring of 1987. The process began with a series of hearings, publicized in community papers and announced in a mailing to community groups throughout the city (Exhibit 62, Appendix VI). The purpose of these hearings was to solicit comments and recommendations for the Commission's agenda (Appendix VII). Since these hearings the Ravitch and Schwarz Commissions have held 29 public meetings to discuss and formulate proposals for restructuring city government and 25 hearings to consider comments on its various proposals and new proposals. Several hundred witnesses have appeared before the two Commissions. Commission

members and/or Commission staff have held hundreds of informal meetings with interested groups and individuals. Additionally, in early 1989, the Commission held a series of legislative fact-finding hearings with panels of invited experts (Exhibit 63, Appendix IV).

The Commission has conducted a vast education campaign not only about its meetings and hearings but also about the charter, opportunities to influence charter revision, and the various proposals of the Commission.

The education and outreach programs incorporated four goals under the general theme of encouraging wide public participation: (1) to inform the public generally about the charter and charter change; (2) to stimulate recommendations from as wide a public as possible for charter change; (3) to inform the public about the Commission's various preliminary proposals and solicit comments on them; and (4) commencing now, to educate the public on the final proposals.

The techniques for accomplishing these goals have been multi-faceted and have included: the building of a 62,000 entity mailing list (Appendix XII); the development of multi-language educational materials and a strategy for their distribution, through mail and other means; ongoing press relations; and an active speakers bureau.

The initial list consisted of members of the press, elected officials and appointed officials; a variety of civic organizations and organizations likely to have an inherent interest in charter revision, including legal organizations like the NAACP Legal Defense



Fund, the Puerto Rican Legal Defense Fund, the Asian American Legal Defense Fund, the Puerto Rican Bar Association, the Metro Black Bar and the Medgar Evers Center for Law and Social Justice. Advocacy organizations including the NAACP, Community Service Society, Association of Puerto Rican Executives, Institute for Puerto Rican Policy, Urban League, Chinatown Planning Council and Chinatown Voter Education Alliance were also included (Exhibit 64, see also master mailing list, Exhibit 1, supra). The mailing list was continuously expanded as organizations were identified through outreach efforts.

These many organizations have served effectively as the building blocks of the Commission's outreach efforts. They have received materials, participated in hearings, attended meetings, organized forums and educated their members. The Commission's members and staff have repeatedly met with the leaders of these and other organizations, as well as minority elected officials and religious leaders, throughout the charter revision process (Exhibit 65).

The Commission also launched efforts to disseminate information about charter change as widely as possible. This effort included two series of subway posters in English and Spanish, posted throughout the entire subway system, offering materials to anyone who called; a public service notice in the New York City telephone bills, which produced 5000 requests for information; 200,000 copies of a booklet of games and puzzles, distributed through libraries, unions, literacy programs and schools, to help the general public understand how the city runs; two booklets-in Spanish and Chinese

distributed to individuals to explain the city's governmental system; flyers to every city worker (385,000) offering information; a videotape on the challenge of charter revision; a wall poster, illustrating the structure of the city, that hung in city offices, libraries, banks and subway platforms throughout the city; and public service announcements in both English and Spanish aired periodically throughout the process (Exhibit 66).

By November 1988 the mailing list numbered approximately 52,000 addresses of organizations and individuals. By August 1989 it numbered approximately 62,000.

The Commission sought substantive input from as many groups as possible in shaping its proposals. To this end, the Schwarz Commission held 18 public hearings, in addition to which its members and staff met with, literally, thousands of people in a variety of arenas to solicit thoughts and ideas.

In the winter of 1989, for instance, following six fact-finding hearings, a series of roundtable discussions on particular charter topics (land use, budget, contracts, representation) were held with interested groups. Participants spent three or more hours with staff members discussing particular questions and perspectives. Concrete proposals emerged from these meetings. The Office of Financial and Economic Opportunity (page 35, supra), for instance, was a direct outgrowth of the meeting held with minority contractors.

Throughout the process the print and electronic media were kept abreast of the Commission's progress (Appendix XI). Press releases

were sent to a press list that now numbers approximately 300, including African American, Latino, Chinese and Korean newspapers and TV and radio stations; calls to the wire services were placed after all public meetings; public service announcements were sent to radio stations; meetings with editorial boards were conducted; feature stories on both radio and TV were encouraged (Exhibit 67); and paid ads were taken out in numerous papers advertising the public hearings and the forums on fair representation (Exhibit 68).

This public process had a substantial impact on the Commission's final proposals. Over the two and one-half years, an extraordinary number of proposals and comments have been received by the Commission (Appendices IX and X), and each set of Commission proposals has been modified after each round of public comments. For example the Schwarz commission revised its preliminary proposals, summaries of which were available in English, Spanish and Chinese, (Exhibit 69), in a series of meetings held between June 15 and June 27, 1989, after an earlier round of public hearings. By July 5, 1987, a summary of these revised proposals was mailed with announcements of upcoming public hearings (July 17-21) to the Commission's entire mailing list. These summaries were also translated into Spanish, Chinese and Korean (Exhibit 70). The Commission also mailed approximately 2,000 copies of the full charter language to its master mailing list. (This list, which is part of Exhibit 1, includes the press, elected officials, appointed officials, community boards, representatives of organizations that have submitted proposals and anyone who has ever testified at the

hearings.) The Commission also invited people to the final round of public hearings with quarter and half-page ads in the major daily and minority group newspapers (Exhibit 68, supra).

As noted throughout, all of the Commission's proposals are either the product of ideas from the public or have benefitted from public comment, e.g., the larger council, the new districting Commission and criteria, the council's expanded jurisdiction over land use decisions and the Independent Budget Office (Exhibit 71).

The responsiveness of the Commission to public input has been well noted (Exhibit 72). As Manhattan Borough President Dinkins testified at the July 21 public hearing:

[T]he Commission has made good use of the extra time provided by extending the deadline for adoption of a final proposal. The additional month of hearings and deliberations has produced some valuable results....These are thoughtful responses to issues that have been raised over the course of your hearings and will be important components of the restructured city government." (Exhibit 73)

V. The Decision to Schedule a Referendum for November 7, 1989

The Commission voted unanimously at its August 2, 1989 meeting to submit its proposals to public referendum on November 7, 1989, the date of New York City's general municipal elections (Exhibit 74). This action affirmed a tentative decision of the Commission, taken at its March 31, 1989 meeting, to "strive to place proposed charter provisions on the ballot this November" (Exhibit 75). Mindful of the importance of obtaining Justice Department preclearance prior to the referendum, the Commission initially planned to complete its work by July 7, 1989 to allow the preclearance process to end as closely as possible to September 7, 1989, the deadline for filing the

proposed charter with the City Clerk for a November 7 referendum under Section 5(b) of the Municipal Home Rule Law (Exhibit 6, supra). However, the Commission, subsequently determined that another month was needed to provide adequate time for careful consideration and the development of as broad a consensus as possible. Accordingly, on June 6 the Commission amended its work schedule to add an additional month of hearings and meetings, to revisit and, if appropriate, modify its proposals after additional reflection by the public and members of the Commission (Exhibit 76).

Under Section 36(5) (b) of the Municipal Home Rule Law, the Commission had three choices with respect to the date of a referendum: the 1989 general election, the 1990 general election, or a special election held sometime in between. Given the importance of maximizing public participation and reducing the influence of special interest groups, the Commission determined that holding a referendum in conjunction with a general election was far preferable to a special election.

The Commission also determined that the 1989 general election was greatly preferable to the 1990 general election, despite some opposition to this decision. After the announcement of its tentative decision of March 31, 1989, several individuals and groups, including some that had been participating in the process for over a year, communicated the view that this schedule would hamper their opportunity to have an active role in influencing the Commission's proposals and educating their constituencies. Sharing the Commission's concerns about a special election, most of these

groups asked for a delay until the general election in November of 1990; some requested a special election. Other groups, such as the NAACP, responded by asking that there be no delay (Exhibit 77).

After consideration of these concerns, the Commission chose to adhere to the November 7, 1989 date. This decision was based on a number of factors. Foremost was the ongoing unconstitutionality of the present Board of Estimate, which underrepresents some 4.1 million people (the approximate population of Brooklyn and Queens), and the affirmative responsibility of members of the Commission to provide a timely remedy. The Second Circuit's Morris decision of October 8, 1987 permitted the Board to function pending enactment of a remedy, but cautioned that the remedial process could not last indefinitely: "[S]ix months should be a target area, one year a deadline." Morris v. Board of Estimate, 831 F.2d. 384, 393 (2d Cir. 1987). By the date of the Second Circuit's decision, the Ravitch Commission had already been in existence over nine months. Nearly another six months passed, during which the Ravitch Commission held numerous public hearings and meetings and considered many proposals, before the Supreme Court granted review in Morris. Moreover, upon its appointment in January 1989, the Schwarz Commission began an intensive series of legislative hearings (Appendix IV), roundtable meetings with community leaders (Exhibit 78) and various research studies. Thus by the time of the Supreme Court's Morris decision, the two commissions had devoted approximately 17 months to devising a remedy.

The Schwarz Commission accordingly decided that any delay

beyond November 1989 could well be deemed unreasonable by the courts. There was a realistic concern that further delay would trigger litigation which might result in a court-ordered referendum, or possibly even a judicially-imposed remedy which necessarily could not include the Commission's many enhancements of minority participation and opportunities that are not strictly tied to remedying the one person, one vote violation (Exhibit 79). There was also concern that additional delay might lead the New York State Legislature (a majority of whose members do not represent New York City) to step in and impose a remedy. In short, New York City had operated long enough under an unconstitutional form of government. The time had come to bring closure to the charter revision process and put a new governmental system into place.

Additionally, the Schwarz Commission concluded that the centerpiece of its proposed changes, the new 51-member city council, could not be elected in 1991 if the referendum were to be delayed another year. A November 1990 referendum would make it impossible for the new Districting Commission to be appointed, staffed and organized to draw council district lines for a 1991 primary (proposed section 1152(d)(9)).

The Schwarz Commission further believed that in view of the extensive education and outreach programs conducted by both commissions over more than two and one-half years, which brought ideas that have formed the foundation for much of their work, a November 1989 referendum date was merited. Moreover, most of those who have sought delay have either actively participated in the

charter revision process, or have been given opportunity to do so, since the beginning of the charter revision process in 1987. Many has been instrumental in urging the two commissions to adopt those provisions which would most enhance minority group participation in city government (Exhibit 80).

The Commission believes that it has developed a new charter which will provide all citizens of New York City with a government which is fairer, more representative and more accessible. There has been and will be adequate time for public consideration of these proposals. Balancing the need to implement a Morris remedy and begin the new government against whatever marginal benefit might result from several additional months or a year of further public discussion, the Commission decided to proceed with a November 7, 1989 referendum. The vote in favor of this action was unanimous.

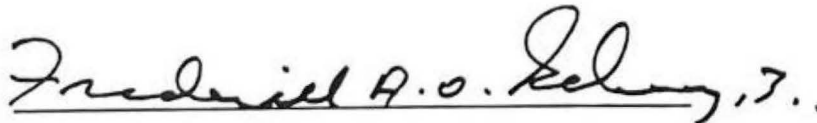


CONCLUSION

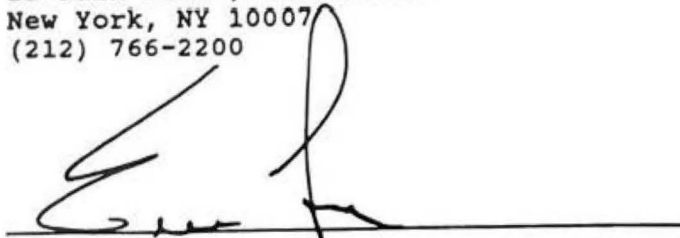
Throughout the two and one-half years of the charter revision process, the Ravitch and Schwarz Commissions have devoted extensive attention to enhancing the participation of racial and language minority groups in New York City government. No issue in charter revision has received more thorough care and consideration. The Commission believes that it has developed a new system of government which will provide all citizens of our City with effective representation. The revised charter should be precleared.

Respectfully submitted,

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## EXHIBITS

1. a) Notice in English and Spanish announcing submission of charter proposals to the Justice Department for preclearance under the Voting Rights Act (copies in Korean and Chinese will be available for distribution from the Commission offices), b) the "master" mailing to which notice was sent, c) the press list, as subset of the master list (b and c are also contained in Appendix XII which includes a more complete explanation of these lists).
2. a) "The Voting Rights Act of 1965 in New York City: A Historical Perspective," prepared by Paul Wooten, First Deputy Counsel, Charter Revision Commission; and b) recent preclearance applications and approval documents.
3. Section of proposed charter providing for the transition schedule.
4. Ravitch Commission certificate of appointment.
5. Eastern District Court decision, Second Circuit Court decision, U.S. Supreme Court decision in Board of Estimate v. Morris.
6. Municipal Home Rule Law.
7. Minutes and transcript of April 14, 1988 Ravitch Commission meeting.
8. Letter preclearing 1988 Justice Department submission, dated Oct. 11, 1988.
9. Volume I of The Report, New York City Charter Revision Commission, January 1989.
10. Schwarz Commission certificate of appointment.
11. Minutes of a) the Feb. 16, 1989 meeting, b) the March 31, 1989 meeting, and c) the transcript of the March 31, 1989 meeting.
12. List of Schwarz Commission members with biographies.
13. a) Minutes of Ravitch Commission meetings, March 17, 1988, b) March 28, 1988, and c) "Proposals by Commissioners Richard Ravitch and Dean Trager," Charter Revision Commission, 1988.
14. Motion and vote tally, Schwarz Commission decision to reject weighted voting, May 2, 1989.

A.

15. Ravitch Commission research agenda and vote to adopt it, June 23, 1987: a) minutes, b) agenda of meeting, and c) subjects adopted for major study.
16. Letter from Eric Lane to Richard Ravitch, dated March 10, 1988.
17. a) "Minority Membership on the Board of Estimate: The Pursuit of Fair and Effective Representation," memo dated Feb. 17, 1989, by Frank Mauro, Research Director, Charter Revision Commission; b) "White/Non-white Democratic Primaries for Board of Estimate Seats," by Frank Mauro; and c) Appendices B and C from "Filling Vacancies," by Gerald Benjamin for the Charter Revision Commission, December 1988.
18. U.S. District Court decision in Andrews v. Koch.
19. Racial and Ethnic Breakdown by Borough, for total population, voting age population, and voting age citizen population (Tables 1-3).
20. Racial and Ethnic Breakdown by Borough, 1987, for total population and voting age population (Tables 4 and 5).
21. Letter from Julius Chambers, Director-Counsel of the NAACP Legal Defense Fund, dated Feb. 24, 1989.
22. Statement by the Committee on Civil Rights of the Association of the Bar of the City of New York.
23. New York State Court decision in Iannuci v. Board of Supervisors.
24. a) Transcript of Schwarz Commission May 2, 1989 meeting, b) tables compiled by Commission staff that were presented at the meeting, and c) two memorandum from Commission staff regarding weighted voting.
25. Testimony and proposals regarding the governmental value of the Board of Estimate: a) summaries of positions from subject index to testimony from 1987 Ravitch Commission public hearings (Appendix VII), b) statement from the Citizens Union of New York, and c) statement from the Citizens Budget Commission.
26. "Comparison of Minority Representation on Current Council and Board of Estimate," "Board of Estimate and Council Districts in Order by Black and Hispanic Percentage of Population," and "Board of Estimate and Council Districts in Order by Black, Hispanic, and Asian Percentage of Population," tables compiled by Commission staff.

27. a) Transcripts of Schwarz Commission May 6 and b) June 27, 1989 meetings, c) "District Size and Minority Representation," memo by Frank Mauro presented at the May 5 meeting; and d) "The Size of the City Council," from The Election, Organization and Operation of the City Council, by Gerald Benjamin and Douglas Muzzio for the Charter Revision Commission, December 1988.
28. a) Cover memo explaining exhibit, b) Summary Tables 1 - 5 on Minority representation in the City Council, c) Racial and Ethnic Breakdown for Current Council Districts -- Tables and Maps, and d) Racial and Ethnic Breakdown for 51-District scenario -- Tables and Maps.
29. a) Testimony supporting increase in City Council through Spring 1989, b) testimony of Roscoe Brown at July 21, 1989 public hearing, c) testimony of Pauline Chen, Chinatown Voter Education Alliance at the June 6, 1989 hearing, and d) testimony of Gail Kong, Vice President of the Chinatown Voter Education Alliance at the June 8, 1989 hearing.
30. Testimony by Dr. Luther Blake at June 1, 1989 public hearing.
31. Motion and vote tally of Schwarz Commission from June 27, 1989 meeting.
32. Testimony by Dr. Luther Blake at July 21, 1989 public hearing.
33. a) Cover memo explaining exhibit, b) four tables outlining scenarios, and c) data provided by Asian-American groups.
34. a) Memo by Chairman Schwarz, April 24, 1989, and b) "Give City Council Increased Power, New York is Urged," New York Times, April 25, 1989.
35. a) "Black and Hispanic Officials are Cool to 2-House Plan," New York Times, May 19, 1989; b) Letter from Councilmember Enoch Williams, April 27, 1989, c) News release from Councilmember Archie Spigner, April 6, 1989, and d) "Charter Panel Tilted Scales Toward Minorities and Away from Boroughs," New York Times, May 16, 1989.
36. "Minority Population/Representation in Various Districting Systems," and "One Possible 19-Member Body with Borough Presidents," tables compiled by Commission staff.
37. Memo from Paul Wooten to Eric Lane and Frank Mauro, May 4, 1989.
38. Article XIII, section 8, New York State Constitution.

39. Testimony and discussion of 1991 elections from a) Commissioner Harriet Michel, June 27, 1989; b) transcript from July 31, 1989 meeting; c) Roscoe Brown, July 21, 1989; d) Gene Russianoff, July 21, 1989; and e) Luther Blake, July 21, 1989.
40. Letter from Julius Chambers, NAACP Legal Defense Fund, Aug. 1, 1989.
41. Testimony supporting the establishment of an Independent Budget Office: a) The City Project, April 12, 1989, b) Citizens for Charter Change, May 5, 1989, and c) Barbara Fife for David Dinkins at the July 21, 1989 public hearing.
42. a) Summary of land-use proposals by Commission staff, and b) memo from the Chair, dated June 15, 1989.
43. Testimony about land-use review: a) New York Public Interest Research Group, b) "Charter Commission Widens Proposals," New York Times, June 16, 1989; c) New York Lawyers for the Public Interest, d) the Puerto Rican Legal Defense Fund, and e) the Community Service Society.
44. a) "New York's Poorest Neighborhoods Bear the Brunt of Social Programs," New York Times, July 16, 1989; b) Testimony by Councilmember Mary Pinkett at July 21, 1989 hearing.
45. Description of land use review under current and proposed charter, by Commission staff.
46. a) Transcript of public meeting of the Ravitch Commission, March 28, 1988, and b) transcript of public meeting of the Schwarz Commission, April 25, 1989.
47. a) Transcript of legislative hearing on procurement by the Schwarz Commission, March 1, 1988, testimony by Edward V. Regan, Comptroller of the State of New York and b) transcript of legislative hearing on procurement by the Schwarz Commission, March 1, 1989, testimony by Gerald Manza, Director of Special Projects, NYC Department of Sanitation.
48. "Contracting in New York City Government," Institute for Public Administration, November, 1987, pp. 56 - 60.
49. a) Transcript of legislative hearing on procurement by the Schwarz Commission, March 1, 1989; testimony by Annmarie Walsh, President of the Institute of Public Administration, and b) letter from Anne Marie Walsh, Frederick A.O. Schwarz, Chair of Charter Revision Commission, dated March 2, 1989.
50. Transcript of public meeting of the Schwarz Commission, April 24, 1989.

51. a) "Summary of Recommendations to the Charter Revision Commission" (Ravitch), prepared by Commission staff; b) "Summary of Recommendations: Independent Analyses of New York City Procurement Process," prepared by Commission staff; and c) "Summary of Written Recommendations made to the Schwarz Commission, Spring - Summer 1989," prepared by Commission staff.
52. Testimony and comments from minority groups in support of an Office of Economic and Financial Opportunity from a) Congressman Major Owens, April 14, 1989, b) notes from April 10, 1989 roundtable on minority contracting issues conducted by Commission staff, and c) letter from David Dinkins to the New York Times, March 16, 1989.
53. Testimony from a) New York Building Congress, b) Chamber of Commerce of the Borough of Queens, c) the Association of the Bar of the City of New York, and d) the Women's City Club of New York, Inc.
54. Government Auditing Standards, United States General Accounting Office, 1988.
55. Testimony from a) Mark Siegal, State Assembly, and b) Eleanor Clark French, Women's City Club.
56. Letters regarding the City Council President from a) Stanley Hill, DC 37, b) Herman Badillo, c) Calvin Butts, Abyssinian Baptist Church, d) Hazel Dukes, New York State NAACP, e) Major Owens, U.S. House of Representatives, f) Enoch Williams, Councilmember and g) Association of Puerto Rican Executive Directors.
57. a) Transcripts from Schwarz Commission public meetings on May 6, 1989, and b) May 13, 1989.
58. a) Motions and vote tallies for the May 6, 1989, and b) July 31, 1989 meetings.
59. "Position Paper of the New York State Conference of the NAACP Branches on Charter Revision for New York City," July 30, 1989.
60. a) Memo from Tim Tompkins and Andrew Lynn, Commission staff, May 19, 1989, b) health care proposals from Citizens for Charter Change, and c) testimony from Marshall England, July 20, 1989.
61. Testimony from Roscoe Brown, July 21, 1989 public hearing.
62. 1987 hearing advertisement and publication schedules with newspapers listed.

63. a) Attendance lists and b) press releases for six "fact-finding hearings," Winter and Spring 1989.
64. A sample of Charter Revision Commission outreach letters.
65. Schwarz Commission outreach efforts, those targeted to minority groups noted: a) speaking engagements and meetings of commissioners and senior staff, b) communications staff speaking engagements, community board meetings, roundtable discussions, telephone contacts, mailing lists targeted toward minority groups (these are a subset of Appendix XII), and special events, and c) meetings by research staff.
66. Community outreach materials, including posters, public service notices, newsletters, booklets, fliers, and brochures. (See blue folder).
67. a) Schwarz Commission press releases, b) lists of television and radio shows that appeared since March, 1989, and c) cartoons on charter change.
68. a) Paid advertisements in 1989 and b) notices of public meetings and hearings.
69. Summaries of the Schwarz Commission's preliminary proposals in a) Spanish and b) Chinese (for English version, see Appendix I, Vol. 1).
70. Summaries of the Schwarz Commission's revised proposals in a) Spanish, b) Chinese, and c) Korean (for English version, see Appendix I, Vol. 1).
71. a) "Changes Proposed by the Chair to the Adopted Preliminary Proposals as the Result of Public Testimony and Comment," June 15, 1989; and b) "Charter Chairman Widens Proposals," New York Times, June 16, 1989.
72. Testimony and comments on Commission responsiveness.
73. Testimony of Barbara Fife for David Dinkins at July 21, 1989 public hearing.
74. Transcript from Aug. 2, 1989 meeting of the Schwarz Commission.
75. Minutes from Schwarz Commission March 31, 1989 meeting.
76. a) Motion from Schwarz Commission June 6, 1989 meeting and b) memo from the Chair, June 6, 1989.
77. Position paper from the New York State Conference of NAACP Branches, July 30, 1989.

78. Notes from roundtables conducted by Commission staff (see also Exhibit 52 for notes from minority contracting roundtable).
79. "End of a Power in New York City," New York Times, March 26, 1989.
80. Recommendations by pro-delay groups that were incorporated into Commission's final proposals.



APPENDICES

I. Summary and bill language of Charter Revision Commission charter proposals.

- ✓ Volume 1: Significant Proposal Drafts of the Charter Revision Commission
  - Ravitch and Trager Proposals
  - Proposals of the Chair, April 24, 1989
  - Preliminary Proposals
  - Summary of Preliminary Proposals
  - Memo of changes proposed by the Chair, June 15, 1989
  - Revised Proposals (draft charter language)
  - Summary of Revised Proposals

- ✓ Volume 2: Charter of the City of New York (Proposed)
  - Summary of Final Proposals

✓ II. Charter of the City of New York (Existing)  
Adopted by the Voters of the City November 8, 1988

✓ III. Voting Rights and the Board of Estimate: A Compilation of Advisory Opinions, Memoranda, Correspondence and Related Materials (November 1988)

IV. Transcripts from public fact-finding hearings, Winter-Spring 1989 (6 volumes).

- ✓ Volume 1: 2/28/89
- ✓ Volume 2: 3/1/89
- ✓ Volume 3: 3/2/89
- ✓ Volume 4: 3/9/89
- ✓ Volume 5: 3/14/89
- ✓ Volume 6: 3/15/89

B.

V. Transcripts of public meetings of the Charter Revision Commission (20 volumes).

Note: Transcripts of early Ravitch Commission meetings were not kept. See minutes (Appendix VIII) for details of discussion and votes.

Volume 1 contains transcripts of relevant meetings of the Ravitch Commission (omitted are selected meetings from June 1987 to February 1988, as well as those after April 14, 1988 through September 1988 where only issues relating to the 1988 referendum were discussed).

- ✓ Volume 1: 2/25/88
- 3/17/88
- 3/28/88
- 4/4/88
- 4/14/88

Volumes 2 - 20: Transcripts of Public Meetings of the Schwarz Commission.

- ✓ Volume 2: 1/20/89
- ✓ Volume 3: 2/16/89
- ✓ Volume 4: 3/31/89
- ✓ Volume 5: 4/24/89
- ✓ Volume 6: 4/25/89
- ✓ Volume 7: 5/2/89
- ✓ Volume 8: 5/6/89
- ✓ Volume 9: 5/10/89
- ✓ Volume 10: 5/13/89
- ✓ Volume 11: 5/15/89
- ✓ Volume 12: 6/15/89
- ✓ Volume 13: 6/20/89
- ✓ Volume 14: 6/21/89
- ✓ Volume 15: 6/22/89
- ✓ Volume 16: 6/26/89
- ✓ Volume 17: 6/27/89
- ✓ Volume 17a: 7/13/89
- ✓ Volume 18: 7/31/89
- ✓ Volume 19: 8/1/89
- ✓ Volume 20: 8/2/89

date received 9/10/89

VI. Transcripts of public hearings of the Charter Revision Commission (21 volumes).

Volumes 1 - 7: Transcripts of relevant public hearings of the Ravitch Commission. Public hearings were held in June 1988 regarding the November 1988 referendum issues. These are not included.

- ✓ Volume 1: 4/22/87
- ✓ Volume 2: 4/23/87
- ✓ Volume 3: 4/28/87
- ✓ Volume 4: 4/29/87
- ✓ Volume 5: 4/30/87
- ✓ Volume 6: 5/7/87, part one
- ✓ Volume 7: 5/7/87, part two

Volumes 8 - 21: Transcripts of all public hearings of the Schwarz Commission

- ✓ Volume 8: 4/4/89 (for public officials)
- ✓ Volume 9: 4/6/89 (for public officials)
- ✓ Volume 10: 5/31/89
- ✓ Volume 11: 6/1/89
- ✓ Volume 12: 6/5/89
- ✓ Volume 13: 6/6/89
- ✓ Volume 14: 6/7/89
- ✓ Volume 15: 6/12/89 (forum on fair representation)
- ✓ Volume 16: 6/13/89 (forum on fair representation)
- ✓ Volume 17: 7/17/89
- ✓ Volume 18: 7/18/89
- ✓ Volume 19: 7/19/89
- ✓ Volume 20: 7/20/89
- ✓ Volume 21: 7/21/89

- ✓ VII. Topic Index to Testimony at April 22 - May 7, 1987 Public Hearings. This was the first series of Ravitch Commission public hearings that contributed to formation of the Commission's research agenda.

VIII. Minutes of all meetings and record of all votes taken by the Ravitch and Schwarz Commissions (3 volumes).

- ✓ Volume 1: Minutes with Supporting Documents: April 24 - June 26, 1989 Meetings
- ✓ Volume 2: Minutes with Supporting Documents: June 27 - August 2, 1989 Meetings
- ✓ Volume 3: Minutes and Votes of the Ravitch and Schwarz Charter Revision Commission Meetings

IX. All proposals, letters, and written testimony from public hearings from officials, organizations, and individuals to the Ravitch Commission.

✓ Volume 1: Proposals to the Ravtich Commission: Public Officials

✓ Volume 2: Proposals to the Ravitch Commission: Organizations and Individuals

✓ Volume 3: Additional Proposals Initially Submitted to the Ravitch Commission

X. All proposals, letters, and written testimony from public hearings from officials, organization, and individuals to the Schwarz Commission (12 volumes).

✓ Volumes 1-7: Catalogue of Schwarz Commission Correspondence

✓ Volume 1: 11/30/88 - 4/18/89

✓ Volume 2: 4/19/89 - 5/9/89

✓ Volume 3: 5/9/89 - 5/29 89

✓ Volume 4: 5/29/89 - 6/5/89

✓ Volume 5: 6/6/89 - 6/15/89

✓ Volume 6: 6/15/89 - 6/30/89

✓ Volume 7: 7/1/89 - 8/7/89

✓ Volume 8: Written Testimony Submitted at Public Hearings at Public Hearing for Elected Officials: April 4 and 6, 1989

✓ Volume 9: Written Testimony Submitted at Public Hearings:  
May 31, 1989  
June 1, 1989  
June 5, 1989  
June 6, 1989  
June 7, 1989

✓ Volume 10: Staten Island Hearing (Written Testimony)  
July 17, 1989

Manhattan Hearing (Written Testimony)  
July 18, 1989

✓ Volume 11: Queens Hearing (Written Testimony)  
July 19, 1989

Bronx Hearing (Written Testimony)  
July 20, 1989

Brooklyn Hearing (Written Testimony)  
July 21, 1989

XI. News Clippings: Ravitch Commission.

Volume 1: Clips from April 1988 to December 1989 of the Ravitch Commission.

Volume 2: Clips from November 1988 to July 1989 of the Schwarz Commission.

Volume 3: Clips from March 1989 to August 1989 of the Schwarz Commission and addendum of earlier clips.

XII. A. The "general" mailing list.

This volume contains 28,000 entities. In addition, Charter Revision materials are sent to 14,000 names supplied by the Citizens Committee of New York (the Commission supplies materials to the Committee which uses its mailing house to send out the information to neighborhood associations). As of August 1989, companies that do business with the City will contribute an additional 20,000 names to the Commission's mailing list (these names are also not contained in this volumes), leading to a total general mailing list of 62,000 names.

The general list includes a base list from the Ravitch Commission that was enlarged to its present size during the Schwarz Commission. These organizations and people receive all newsletters, public hearing schedules, speakers' bureau fliers, and summaries of revised proposals.

B. The "master" mailing list.

This is a subset of the general list above. It is a compilation of the most active followers of the charter revision process, and members of the press. The entities on this list receive all materials mentioned above, as well as public meeting schedules, some press releases, summaries of revised proposals and special notices. This list is also referenced in Exhibit 1 and Exhibit 64.

XIII. A sample of outreach efforts, and schedules of speaking engagements, meetings and briefings by Ravitch Commission members and Commission staff with officials, community groups and organizations, and individuals.

XIV. Examples of materials published by elected officials and civic organizations explaining charter revision.

**ORIGINAL**

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OF

NEW YORK CITY CHARTER REVISION COMMISSION

BROOKLYN LAW SCHOOL  
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Brooklyn, New York 11201

Saturday, May 6, 1989  
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**ADD 69**

1 THE CHAIRMAN: The signer is here, already  
2 asking if there is signing assistance necessary.  
3

4 Can you answer yes or no?

5 THE CHAIRMAN: What helps you -- can you just  
6 pick us up whether we talk straight ahead -- I assume  
7 you can.

8 Is Eric Lane here?

9 EXECUTIVE DIRECTOR LANE: Yes.

10 THE CHAIRMAN: Assume your seat.

11 I would like, next, to turn to the subject of  
12 the size of the City Council.

13 Is Frank Mauro here? We can't turn to the  
14 size of the City Council without Frank Mauro.

15 Could someone look for Frank?

16 We are going to wait for Frank who can deal  
17 with what are essential to our analysis.

18 It's permissible for them to chat among  
19 themselves.

20 SECRETARY LEVENTHAL: Here is Frank.

21 THE CHAIRMAN: So, what I want to next turn to  
22 is the subject of the size of the City Council.

23 I would like first to introduce it  
24 conceptually, then turn to Frank's fact analysis, and  
25 Eric has some data on that may bear on legal

1 questions, and then just open it for discussion.

2  
3 Conceptually -- I mean, our interest here is  
4 in seeing if a change in the size of the City  
5 Council -- that is, an enlargement in the size of the  
6 City Council, would enhance the opportunities for  
7 minorities to be elected.

8 Then we need to also look at the questions of  
9 the effectiveness of the body. We need to consider  
10 the size of the districts in an enlarged body, and  
11 whether there are other implications having to do  
12 with responsiveness to communities that arise from a  
13 change in size.

14 But, the principal issue that we want to look  
15 at is, whether expansion of the Council would add to  
16 opportunities for minorities to get elected to the  
17 Council.

18 There are, very broadly speaking, a number of  
19 variables which can answer that question in the  
20 future, one of which is size. But I want to start  
21 with another variable, and make a couple of comments  
22 about the other variable before we get to size.

23 Obviously, another variable is the way in  
24 which the lines are drawn, because you can -- you  
25 know, there are almost an infinite number of lines



1 that can be drawn as long as they are somewhat  
2 compact and contiguous, et cetera. There are,  
3 really, an infinite number of lines that can be  
4 drawn, and the way those lines are drawn can affect  
5 the result significantly.  
6

7 You could gerrymander in a way that makes it  
8 more difficult to elect certain people, or you could  
9 draw lines in a way that makes it easier.

10 Now, recognizing that variable, I want to  
11 propose to the Commission for it's consideration,  
12 that we add to the criteria that are now in the  
13 Charter, another criteria that relates directly to  
14 the subject that we are talking about.

15 Now, the criteria that are now in the  
16 Charter -- and you all have your Charters here --  
17 this is in Section 52 of the Charter, which is on  
18 page 25 of the book that you have.

19 It is page 25, Section 52.

20 Sherry, you and I can share.

21 Now, the currently listed criteria, which the  
22 reapportionment body is mandated to consider, and it  
23 says, "mandated to consider in the order in which  
24 they are listed," and for the moment, I'm not  
25 addressing the question of order and where this

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proposed language that I would like to suggest to the  
ommission we add, would go. But, the criteria now  
listed are first, difference in population. I mean,  
that's driving at the fundamental legal requirement  
of having equal size districts. It says here,  
"-- with deviations of no more than ten percent,"  
which fits within the Abatte's case in which the  
Supreme Court seemed to allow a deviation of about  
ten percent for a municipal government.

So, criteria number one, is the fundamental  
one person-one vote criteria.

Then come three that are really shape  
criteria.

Pat, are you having difficulty finding it?  
It's Section 52, page 25.

COMMISSIONER MURPHY: Okay.

THE CHAIRMAN: Then come three which are  
really shape, and these are language that appears in  
lots of cases. The words are, "contiguous," i.e.,  
you have to have a district, however shaped, where  
you could walk from one end of it to the other,  
without crossing another district.

Compact -- and there is a piece of guideline  
there which says, "to the extent practicable, don't

1 make it more than twice as long as it is wide."  
2

3 Then, again, "to the extent practicable, a  
4 district should not cross borough or county  
5 boundaries."

6 Then, finally, "to the extent practical, keep  
7 intact neighborhood, communities with established  
8 kinds of common interests and association, whether  
9 historical, racial, economic, ethnic or religious."

10 Now, what I would like to propose, as an added  
11 criteria -- it seems to me an added criteria of great  
12 importance -- would be that we add -- and I wrote  
13 down these words coming down, they may not be  
14 perfect, but this is the concept. We would add, as a  
15 criteria, "effective representation of racial and  
16 ethnic minorities."

17 So that the body doing the redistricting,  
18 which will next happen after the 1990 census, will  
19 have to then, and in 2,000, and 2,010, explicitly  
20 have that criteria in mind.

21 We could -- I would suggest we comment on that  
22 proposal before getting down to the facts on size. I  
23 would like any comments people have about it.

24 COMMISSIONER GOURDINE: Fritz, I'll just start  
25 out by saying I absolutely support that concept, and

1 would vote for it whenever it's appropriate.

2 THE CHAIRMAN: Any other comments?

3 COMMISSIONER MOLLOY: Is that a meaningful  
4 comment, given we've got a ten percent difference in  
5 there? Are we still bound in by the first four, that  
6 the fifth one is not meaningful?  
7

8 THE CHAIRMAN: I think it would be meaningful.  
9 We can discuss the ten percent. The reason for  
10 having that flexibility on the ten percent is  
11 probably how it cuts, vis-a-vis the borough idea,  
12 that you want to keep, to the extent practicable,  
13 but, Terry, I think the answer is yes, it would be  
14 meaningful, and it's, I think, important that we call  
15 the attention of the persons who do the  
16 redistricting, to that essential criteria.

17 COMMISSIONER MOLLOY: Let me add one other  
18 thing, because I'm not knowledgeable on this. It has  
19 been brought to my attention, or it has been  
20 suggested that one way of assuring, because I have  
21 not seen any way of assuring minority power in an  
22 enlarged Council, and that one way might be to  
23 district smaller, where bodies of minorities exist,  
24 rather than enlarge it, and one of the  
25 justifications -- one of the justifications was that

1 the age of minorities are statistically lower and out  
2 of the voting, disproportionately.

3 THE CHAIRMAN: Terry, you couldn't -- I see  
4 where you're going. I do see where you're going.

5 That would not be proper under one person-one  
6 vote.

7 You have to do one person-one vote on the  
8 basis of the population, and not the voting  
9 population. But I think adding this proposed  
10 criteria does force the redistricters to keep in mind  
11 what we regard as one of the -- if not the second  
12 most important -- I mean, you first have to meet one  
13 person-one vote, but after that, it seems to me this  
14 is an extremely important criteria.

15 COMMISSIONER BETANZOS: I would agree. I  
16 think it's a very important, and something that I  
17 would vote for.

18 THE CHAIRMAN: Any other comments?

19 COMMISSIONER FRIENDLY: I just identify with  
20 what has been said.

21 COMMISSIONER MURRAY: Fritz, would you restate  
22 that criteria, again?

23 THE CHAIRMAN: Yes. It's subject to a  
24 committee on style, which, by the way, I'm  
25

1 contemplating making you the Chair of it.  
2

3 It would put as a criteria the effective  
4 representation of racial and ethnic minorities.

5 COMMISSIONER MURRAY: On that, let me ask a  
6 question. It is possible to draw a district in which  
7 minorities of any particular group that you want,  
8 constitute a majority of the persons living within  
9 that district.

10 THE CHAIRMAN: That wouldn't --

11 COMMISSIONER MURRAY: There is also the  
12 problem of the level of political participation by  
13 that particular group.

14 THE CHAIRMAN: Yes.

15 COMMISSIONER MURRAY: Is there some sense,  
16 from what Frank has discovered -- or anybody else --  
17 of what percentage you need in order to make it  
18 really a district that might be represented by  
19 minorities?

20 THE CHAIRMAN: There is, and I think when we  
21 turn to the facts underlying the question whether  
22 more size contributes to more minorities, Frank is  
23 going to have a precise answer to your question based  
24 on both cases, and practical experience.

25 Also the word -- the reasons I put the word

1 "effective" in here is, that this is not meant to be  
2 just a shadow, it is meant to be that you really  
3 think about what is going to get results.  
4

5 COMMISSIONER RICHLAND: Fritz, I think I know  
6 cities pretty well, all over the place, and I don't  
7 know of any city, in any of the places where I have  
8 been in various parts of the country and the world,  
9 in which populations change in areas as quickly as in  
10 New York City.

11 It took less than three years for the area  
12 between West End Avenue and Riverside Drive to change  
13 from predominantly single occupancy Puerto Rican, to  
14 predominantly white. That's the kind of thing that  
15 happens in this City, as happens nowhere else, and  
16 that is true all over the place.

17 The area around Eastern Parkway in Brooklyn  
18 has now become Hassidic. It never was that before.

19 So, you have -- unless you're going to have a  
20 reapportionment every couple of years, I think you  
21 are in an almost impossible situation.

22 THE CHAIRMAN: Bernie, as to the fluctuation  
23 in movement in New York City is correct, the  
24 Constitution requires a census once every ten years,  
25 which gives you the accurate -- although we should

1 all know it is inaccurate, because it undercounts New  
2 York City by half a million or a million people as I  
3 tried to proven a lawsuit -- succeeded in proving in  
4 a lawsuit.

5  
6 But, the Constitution requires a census once  
7 every ten years, and that is the way in which  
8 reapportionment is done, and then one has to, each  
9 ten years, take a count of those changes.

10 Amy.

11 COMMISSIONER BETANZOS: I wonder -- in that  
12 same vein, I wonder if it would be possible to add  
13 something in A, where they talk about the nine  
14 members, to have the nine members reflective of the  
15 ethnic and racial composition of the City, because I  
16 think the lines would be very different if it were  
17 that rather than nine white men.

18 THE CHAIRMAN: I think that's quite possible,  
19 Amy, and I know there is another question, which is,  
20 the appointment of the members of the Commission,  
21 which I would definitely like both to entertain, but  
22 I would like -- and I'm not trying to stop the  
23 discussion of that now, although I think maybe we  
24 should come back to it.

25 But, on this criteria, which is directly



1 focused on our objective, it just did seem to me that  
2 it was logical to try to put something like that on  
3 the table.  
4

5 COMMISSIONER BETANZOS: I think it is, Fritz,  
6 because depending on who is drawing the lines, the  
7 lines will be very different.

8 THE CHAIRMAN: Okay.

9 So, -- Sy.

10 COMMISSIONER GOURDINE: Fritz, if I may,  
11 could you just repeat that language, I don't know if  
12 it's appropriate to make a motion.

13 THE CHAIRMAN: The language, subject to a  
14 committee on style, would be that a criteria for the  
15 body that does the redistricting, would be the  
16 effective representation of racial and ethnic  
17 minorities.

18 COMMISSIONER GOURDINE: I would like to  
19 incorporate that as a motion, if I may.

20 THE CHAIRMAN: Okay.

21 COMMISSIONER BETANZOS: I second it.

22 COMMISSIONER RICHLAND: Are Satmars a racial  
23 minority within a Lubavicha neighborhood, is that the  
24 kind of thing you have, and we deal with it in that  
25 way.

1 THE CHAIRMAN: I think we should state  
2 constitutional language, which is the sort of  
3 language here, and not try and list every group, but  
4 we should have State constitutional type language.  
5

6 COMMISSIONER RICHLAND: Which Constitution?

7 THE CHAIRMAN: I'm referring conceptually to  
8 the idea of constitutional type language.

9 Any, there has been a motion and a second.

10 Any more discussion?

11 Okay. All in favor of the motion.

12 All opposed.

13 Any abstentions?

14 COMMISSIONER RICHLAND: I'm neither  
15 abstaining nor voting in favor of it, nor voting  
16 against it. I just don't know it's dimensions, and  
17 it doesn't make any sense to me in it's present form.

18 THE CHAIRMAN: Okay.

19 COMMISSIONER RICHLAND: When it comes down in  
20 written language, I'll then be in a position to  
21 judge.

22 COMMISSIONER BETANZOS: Now will you address  
23 just A?

24 THE CHAIRMAN: You mean --

25 COMMISSIONER BETANZOS: The composition of it.

1 THE CHAIRMAN: Section -- which section?  
2 50-A?

3 COMMISSIONER BETANZOS: Yes.

4 THE CHAIRMAN: Okay. Amy has made the  
5 suggestion that the Charter should say that the  
6 Districting Commission, however appointed -- and I do  
7 want to reserve the question of how appointed for  
8 some further thought.

9 COMMISSIONER BETANZOS: Yes.

10 THE CHAIRMAN: Should reflect -- should be  
11 reflective of the racial and ethnic composition of  
12 New York City.

13 Is there discussion of that?

14 COMMISSIONER GOURDINE: I'm supportive of it,  
15 and I think that -- I agree with Amy, that who makes  
16 the decision, will often impact on what the decision  
17 is.

18 SECRETARY LEVENTHAL: What would that mean,  
19 exactly?

20 COMMISSIONER MOLLOY: Yes, what would that  
21 mean?

22 Would that mean that the number of minorities  
23 on the Council would have to have that percentage, or  
24 would it mean that they would have to have at least  
25

1 that percentage?

2 THE CHAIRMAN: It's not tied to the Council,  
3 and I think it's a fair question. I don't think we  
4 should be sitting here trying to prescribe  
5 percentages, and if the legislative history suggested  
6 that, I think it would be an error, it's a -- as I  
7 heard the motion, it was to be reflective of --  
8 conscious of that truth, that we want to have it be a  
9 mixed body, without the Charter, in any way, trying  
10 to lay down specific percentages.

11 COMMISSIONER BETANZOS: I'm not talking about  
12 that.

13 THE CHAIRMAN: We shouldn't be doing that, and  
14 the legislative history would make that clear.

15 COMMISSIONER BETANZOS: What I'm really  
16 talking about is insuring some kind minority  
17 diversity on the body.

18 COMMISSIONER MURRAY: Don't you have to change  
19 the way in which the selection process works, because  
20 here you have nominees coming from a variety of  
21 sources. Somebody who is going to nominate two  
22 persons is probably not going to be able to reflect  
23 the type of diversity we're thinking about.

24 THE CHAIRMAN: I would like to reserve the  
25

1 question of the appointment of the people until I  
2 understand a little better, and we all understand a  
3 little better, the history of this and other options.  
4

5 COMMISSIONER MURRAY: I would think the two of  
6 them should go together. That's what I'm suggesting.

7 COMMISSIONER BETANZOS: I have no problem with  
8 that, as at some point, that thought is included in  
9 the language that we finally come up with.

10 THE CHAIRMAN: Okay, so let's hold that  
11 discussion for discussion with -- of the question of  
12 the composition of the body that does the  
13 reapportionment.

14 Okay, now getting back to where we were, the  
15 criteria are, how the redrawing is done, we have  
16 addressed that in part, we got some more to talk  
17 about.

18 Then there are other just plain facts, where  
19 people live, how many people there are, and, I  
20 believe, from my analysis of the evidence, that size  
21 does bear on the prospects, and I would like to turn  
22 to Frank, for Frank to make a presentation on his  
23 analysis of the question of the relationship in New  
24 York City, and, in general, between size and likely  
25 results.

1 So, if I can turn to you, Frank.

2 MR. MAURO: We sent out, during the week --

3 THE CHAIRMAN: Go ahead.

4 MR. MAURO: We sent out during the week, a  
5 little packet on this subject.

6 Is there anybody who doesn't have it with  
7 them?

8 COMMISSIONER MOLLOY: I don't have it.

9 MR. MAURO: Anyone else?

10 COMMISSIONER MURPHY: District size and  
11 minority representation?

12 MR. MAURO: Yes, district size and minority  
13 representation.

14 Okay. We're going to make three points. The  
15 first is that the criteria used to draw districts, to  
16 enhance minority representation to pass muster with  
17 the Justice Department for covered jurisdictions.

18 New York City, as you know, when it redraws  
19 council lines, or when New York State redraws  
20 assembly or congressional lines within New York City,  
21 it must get the prior approval of the Justice  
22 Department for those districts.

23 The criteria that are used to enhance minority  
24 representation and to pass muster with the Justice  
25

1 Department, will determine what the districts are,  
2 and the nature of them.

3  
4 The fact that you can have different criteria  
5 is an involving concept. It is not -- it is proven  
6 to not be adequate, as Arch was implying in his  
7 earlier question, to create a district that has a  
8 majority minority population, and to assume that that  
9 district will elect a representative that is favored  
10 by the minority voters in the district, whether the  
11 representative is a minority or not.

12 The conventional wisdom that had emerged was  
13 that a district needed to be at least sixty-five  
14 percent minority to be considered a minority district  
15 to pass muster with the Justice Department.

16 The Justice Department has denied that they  
17 use that fixed yardstick, that such a fixed yardstick  
18 exists, but it is generally known and referred to in  
19 some court cases as a standard.

20 Basically, the difference in some accounts is  
21 attributed five percent of the difference to the  
22 citizenship difference; five to the age difference;  
23 and five to the participation difference, and I'm  
24 sure it is not that exact.

25 In New York City, the experience, for example,

1 with the City Council, has been that there are twelve  
2 districts that are sixty-five percent or more  
3 minority, but that no district that is less than  
4 eighty percent minority, has elected a minority  
5 representative.  
6

7 So, in the packet, for example, if you will go  
8 to the --

9 COMMISSIONER GRIBETZ: Can you please repeat  
0 that? David asked to repeat that.

1 MR. MAURO: Yes, I will --

2 COMMISSIONER TRAGER: The last statement you  
3 just made.

4 MR. MAURO: Yes, I will.

5 THE CHAIRMAN: Just repeat the statement.

6 MR. MAURO: Yes. I can explain it if you go  
7 to the -- about the middle of the packet.

8 In New York City, in the City Council, there  
9 are twelve districts that are sixty-five percent or  
0 more minority in population, based on the 1980  
1 census.

2 COMMISSIONER TRAGER: Right.

3 MR. MAURO: Of those districts, no district  
4 witness less than -- let's get the smallest number --  
5 less than 81.97 percent minority population, has





Traditionally, the sixty-five percent rule of thumb was, is the minority population sixty-five percent or more, and very frequently, the sixty-five percent or more minority districts that don't elect minority representatives, are districts that are relatively evenly split between blacks and Hispanic.

For example, the district north of Central Park in Manhattan, that is seventy-two and a quarter percent minority in total population, is 31 percent black, and 42 percent Hispanic.

So, by one of the hypotheses is, that in those kind of divided districts, where there are let's say, approximately one-third white, one-third Hispanic, and one-third black, that you cannot consider those minority districts, that they will sometimes elect a candidate who is the choice of minority voters, and sometimes not.

So, the first point to keep in mind is, that the criteria -- that there can be different criteria used to draw districts that are considered to be minority districts for passing muster with the Justice Department.

The second point is, that at any given size system, let's say a fifty-district system in New York

1 City, or a forty-district system, or a sixty-district  
2 system, that at that particular size, with any  
3 particular criteria, you have chosen your size, you  
4 have chosen your criteria, that even with those two  
5 things chosen, a districting commission, depending  
6 on its outlook, or its philosophy, or the chances of  
7 how it happens to draw the districts, can create more  
8 or less districts that meet that particular criteria,  
9 that you could have -- and one of the examples we are  
0 going to run through is what we had the Legislative  
1 Advisory Task Force on Reapportionment do for us --  
2 is to draw three fifty-district systems, a  
3 fifty-district system where we asked them to try to  
4 maximize minority representation, a fifty-district  
5 system where we said if we are trying to minimize a  
6 minority representation, how would you do it, and a  
7 fifty-district system where we said, draw one where  
8 you don't pay any attention to that, and just see how  
9 it comes out. Don't pay attention to affirmative  
0 efforts to minimize minority representation.

THE CHAIRMAN: To maximize.

MR. MAURO: To maximize minority  
representation.

What that analysis has shown is, that you can,

2 in a fifty-district system, you can create a system  
3 which has twenty or more -- twenty districts, i.e.,  
4 forty percent of the fifty at above --

5 COMMISSIONER GRIBETZ: Are you referring to a  
6 particular page in your memo?

7 MR. MAURO: Well, I have it summarized -- the  
8 way -- I'll stop for a moment, and explain how the  
9 memo --

COMMISSIONER GRIBETZ: Maybe we can follow  
you. We don't want to impede your --

MR. MAURO: Right. I was doing an overview  
3 first, before I went into the details.

COMMISSIONER GRIBETZ: I'm sorry, but you're  
going to go through this?

6 MR. MAURO: Yes I'm going to go through this,  
7 okay?

COMMISSIONER GRIBETZ: Cut.

21 MR. MAURO: So, using two tests -- because of  
22 the experience with the Council, the State Assembly,  
23 and the State Senate, we looked at it in two ways.  
24 In one way we said, use 70 percent as the threshold,  
25 how many districts do you create over 70 percent, and  
then we looked another way and said, look at the  
number of districts that you create over 65. Given

1 that the 65 to 70 is an ambiguous area in experience  
2 with elections in New York City for districts in the  
3 range we are talking about, Senate, Council and  
4 Assembly.  
5

6 And in the maximizing version, we were able to  
7 create twenty districts which were -- or 40 percent  
8 of the districts, which were 65 percent or more  
9 minority, and eighteen of those were 70 percent or  
10 more minority. So, 36 percent of the districts were  
11 70 percent or more minority.

12 In the second version, where it was a  
13 minimizing version, only eleven were 70 percent or  
14 more minority. So, taking the same population of the  
15 City, drawing the lines differently, going from  
16 eighteen to eleven with more than 70 percent  
17 minority.

18 And then in the neutral version, where we  
19 asked not to pay attention to the location of racial  
20 and ethnic minorities, it produced thirteen  
21 districts.

22 So, a range from 36 percent over 70 percent to  
23 22 percent within a fifty-district system, depending  
24 on how the districts were drafted.

25 So, at a given size, you can create more or

less districts that meet whatever criteria you have. The criteria is 65 percent minority without attention to the black Hispanic mix, if your criteria is black and Hispanic, separately -- whatever your criteria are, you can draw districts that come out different places on that criteria. There is enough flexibility, within the creating districts of equal size, to do that.

That is the second point -- at a particular size, just by creating the size, you cannot be sure what the result will be. That the districting commission has a lot of discretion.

COMMISSIONER BETANZOS: Why did you use 70 percent when you said it took 89 percent?

MR. MAURO: No, I said the lowest -- by chance, the lowest one in the Council was the 81.9 percent, and that's because there was no district between that 69 - 70 range, and the 82 range -- the reason I used the 70 is, when you look at the Senate and Assembly all together, 70 is a fair threshold. In the sixties, you get 50 percent or more of the so-called minority districts in the sixties, not electing minorities, where above 70, you get virtually all of the districts electing minorities.

1  
2 When we get to that, that will be the first chart we  
3 will look at.

4 COMMISSIONER MOLLOY: Is that statistically  
5 valid?

6 MR. MAURO: I don't know what that means in  
7 this case.

8 COMMISSIONER MOLLOY: Do you have a large  
9 enough statistical body to say that that --

10 MR. MAURO: No, I think that it's experience.  
11 What they look at when they judge this is, they look  
12 not only at the numbers, but they look at the  
13 experience.

14 So, for example, they may accept a district in  
15 Manhattan with a lower minority percentage as a  
16 minority district than a district in Brooklyn.

17 So, electoral experience is taken into  
18 consideration, and I don't think, when you do this,  
19 you're saying that it is based on statistical  
20 sampling. It is based on actual experience,  
21 so, you can't extrapolate based on sampling.

22 The third point is the size point. That  
23 within any districting plan, let's say you have a  
24 particular plan and a particular philosophy. In a  
25 city or state which is not uniformly diverse, where

1 not every census track is the same mix of black,  
2 white and Hispanic, we don't have uniform diversity  
3 in New York City. With any districting plan, any  
4 philosophy, in a city or state which is not uniformly  
5 diverse, increasing the size of the districts, i.e.,  
6 reducing the size of the body, but increasing the  
7 size of the districts, will reduce the number of  
8 districts that can potentially elect minorities  
9 because of a submergence effect.  
10

11 I'll start with a particular example.

12 THE CHAIRMAN: Would you say that one again,  
13 because I wasn't sure I was hearing the reducing and  
14 increasing correctly.

15 MR. MAURO: Okay. I equated increasing the  
16 size of the districts with reducing the size of the  
17 body. In other words, if you have a body which  
18 has -- I'm going to start with an example -- the  
19 number of members on the body.

20 THE CHAIRMAN: It sounds backwards to me.

1 MR. MAURO: That by increasing -- within a  
22 particular philosophy and a particular districting  
23 system --

24 THE CHAIRMAN: Let me catch you up there.  
25 You're assuming now that the redistrictors either



1 have an objective of enhancing minority  
2 representation, or they don't, but you're putting  
3 that aside.

4 MR. MAURO: I'm talking a set plan. You take  
5 any plan, a given plan, and you have -- it can be  
6 with any plan, regardless of what the philosophy was,  
7 and maybe they didn't have a conscious philosophy,  
8 maybe what their unconscious philosophy was, but a  
9 given plan, if you increase the size of the districts  
0 in that plan, i.e., you reduce the size of the  
body --

3 THE CHAIRMAN: If you increase the size of  
4 the districts.

MR. MAURO: Okay, yes.

16 THE CHAIRMAN: As opposed to increasing the  
7 number of the members --

MR. MAURO: You increase the size of the  
district, therefore, you reduce the size of the body.  
0 By doing that --

1 COMMISSIONER GRIBETZ: More population, less  
2 members of the Council.

3 MR. MAURO: Right.

4 THE CHAIRMAN: And that has what effect?

5 MR. MAURO: That has the effect by doing

1 that, in a given districting plan, you reduce the  
2 percentage of the districts that have the potential  
3 for electing minority representatives, giving our  
4 electoral experience, and I'm going to use an example  
5 here.

6  
7 THE CHAIRMAN: And the converse, I take it,  
8 is to --

9 MR. MAURO: Well, I assume the converse -- you  
0 just work in the other direction.

1 COMMISSIONER MURRAY: To put it another way,  
2 are you both reducing the absolute numbers, and also  
3 the percentages?

4 MR. MAURO: I'm talking on about percentages.  
5 I'm saying that by --

6 COMMISSIONER MURRAY: But you have already  
7 reduced --

8  
9 MR. MAURO: By increasing the size of the  
10 districts, reducing the number, you reduce the  
11 proportion, and I'm going to give an example of how  
12 districts disappear, how minority districts disappear  
13 when you make the districts larger.

14 This is Queens. This chart is shaded to show,  
15 by census tract, the tracks which are various  
16 percentages, black non-Hispanic. The darkest color

1 is seventy-five percent or more black non-Hispanic.  
2 The next shade, 50 to 75 percent black non-Hispanic.  
3 The middle shade, 25 to 50 percent, and so forth.  
4 So, this chart is black non-Hispanic.

5  
6 COMMISSIONER ALVAREZ: Who picked the color  
7 scheme here?

8 MR. MAURO: It goes with City Planning.

9 This chart shows the concentration of Hispanic  
0 persons in Queens with the same scale.

1 Now, one of the things that this -- as a  
2 starting point, that this shows, which creates a  
3 challenge later on -- is, geographic segregation of  
4 Hispanics in New York City is not as extensive as  
5 geographic segregation of blacks, and while that is  
6 good from a social perspective, in electoral, as we  
7 will see in creating districts, it creates a  
8 challenge.

9 Now, in the area near LaGuardia Airport, where  
0 there is this black concentration of black  
1 population, and this concentration of Hispanic  
2 population, in the 19 -- after the 1980 census, in  
3 the Assembly redistricting, an Assembly district was  
4 created here, which is about 68 percent minority, and  
5 has elected a black woman to the State Assembly.

1 All of the districts surrounding that district  
2 are overwhelmingly white.

3 I will -- if you want to -- why don't we look  
4 at the particular numbers. This is the fourth page  
5 in the handout. I'm deviating from my script here  
6 to explain this. It's easier if you look at the  
7 numbers then me read them to you.

8 That district is the 35th Assembly District.  
9 If you look at the 35th Assembly District, it is 27  
10 percent black non-Hispanic, 41 percent black -- I  
11 mean, 41 percent Hispanic, 68 percent minority  
12 overall, black and Hispanic.

13 That district is surrounded by three assembly  
14 districts that are overwhelmingly white, by the 27th,  
15 the 30th and the 34th, as the shading indicates.

16 So, if you take -- if you look at the 27th,  
17 which is 17 percent overall minority, the 30th is 24  
18 percent overall minority, and the 34th is 23 percent  
19 minority.

20 When you move to smaller districts -- when you  
21 move to larger districts, that concentration becomes  
22 submerged and no longer exists. So, in two systems  
23 where we have, by experience, larger districts in  
24 that same area, we can look at the Council Districts  
25

1 and the State Senate Districts.  
2

3 In the Council Districts the two districts in  
4 this area are the 19th, 20th and beginning there, but  
5 extending quite far away, the 34th Council District,  
6 and if we look at those three Council Districts, the  
7 19th is 12 percent --

8 THE CHAIRMAN: What page?

9 MR. MAURO: There are a whole bunch of pages  
10 on the Assembly, followed by a whole bunch of pages  
11 on the Council.

12 COMMISSIONER MURRAY: That's after the maps?

13 MR. MAURO: Yes.

14 So, the two districts that -- the two Council  
15 Districts which primarily overlap with that Assembly  
16 District, are the 19th and 20th. The 19th is 12  
17 percent minority, the 20th is 23 percent minority,  
18 and, then, also, catching a part of that area, but  
19 extending quiet far away, is the 34th Assembly  
20 District, which is 32 percent minority.

21 So, going from a system of sixty districts, to  
22 a system of, for example, of thirty-five districts,  
23 the high minority concentration that is possible in  
24 that Assembly District disappears, and the --

25 COMMISSIONER GOURDINE: I have one question.

1 Is this just for background purposes?  
2

3 I mean, we are not considering increasing the  
4 size of districts, right?

5 MR. MAURO: No. It works in both directions.

6 THE CHAIRMAN: Frank, that's why I think the  
7 principle is, that the larger the district, the  
8 harder it is to create effective representation for  
9 minorities, and the converse of that is true. He is  
0 choosing to prove it through moving in one direction.  
You're quite right, we are not considering decreasing  
the size of the City Council, Sy. We're looking at  
the other.  
3

4 COMMISSIONER GOURDINE: I knew that, and I was  
just wondering, if that is the case, why wouldn't we  
16 go to the question of reducing the size to see  
7 whether it, in fact, increases minority  
18 representation.

9 THE CHAIRMAN: Frank, what you could have done  
0 here is, to start with the Council Districts, and  
1 then move to the Assembly Districts, and it would  
have proved the point going in that direction.

3 MR. MAURO: Right.

4 In other words, I just wanted to start by  
25 showing that the concentration was possible.

1  
2 COMMISSIONER TRAGER: Didn't you once tell us  
3 that the highest percentage of minority  
4 representations are the congressional level, the  
5 largest districts you're --

6 MR. MAURO: Yes. If you want to go through  
7 that, we can. It is a result of, on the one hand, of  
8 incumbency, and incumbency protection in the  
9 reapportionment, and having been established, being  
10 able to live with districts that they might not be  
11 able to win de novo. That is one part of it.

12 And another part of it is, that when you have  
13 a congressional district, you can sometimes create  
14 boundaries which reach concentrations which are not  
15 possible in a mid-range.

16 EXECUTIVE DIRECTOR LANE: If you made them  
17 smaller, you can get more.

18 MR. MAURO: Yes.

19 Similarly, the same situation exists here --  
20 exists in the Bronx, where in the North Central  
21 Bronx, there is Assembly District that is  
22 predominantly black, elects a black member of the  
23 Assembly, but when we move to the Council or the  
24 Senate District size, you know, the 35, 26 to 27  
25 range, the entire North Bronx is cut into two

districts which are both overwhelmingly white and elect white representatives.

8 So, its a submergence, and I have a  
9 statistical analysis which we will go threw, but I  
0 just wanted to show on the map, how the combining  
results in -- it is called in the voting rights  
cases, either submergence or dilution, how you can  
make the districts disappear.

(Continued on next page.)



1  
2 In the handout, the first page takes the  
3 existing Assembly and Council systems and shows --  
4 the reason to explain why I did the reduction, Sy, is  
5 that it's time consuming and expensive to get the  
6 Legislative Advisory Task Force on Reapportionment to  
7 do a lot of districting systems, so, to do this  
8 analysis, I, basically, used existing systems and so  
9 that's why I used the existing Assembly Districts and  
10 said, what happens if you had to, within a given  
11 districting system, combine.

12 So, the first page in the handout shows what  
13 happens, that -- it starts with the current Assembly  
District system, which is sixty districts, and it  
5 shows the distribution of those districts by the  
6 percent of the population of the district, which is  
7 black and Hispanic, combined. And, so, you'll see  
that it's basically -- it's the opposite of a bell  
19 curve, that thirty of the districts are zero to 30  
20 percent minority, twenty of the districts are 70 to  
21 100 minority, with scatterings, with ten districts  
22 scattered between 30 and 70.

23 Now, of those districts, just for  
24 informational purposes at this point, the number of  
25 minority representatives actually elected is the

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third line there, that in the assembly, of the twenty districts that are 70 percent or more, sixteen or seventeen of those are represented by members of minority groups. The reason why it's sixteen or seventeen, one of the Hispanic districts is represented by a legislator that the black and Puerto Rican caucus has refused to acknowledge as a member of the minority group. So it's under -- it's debatable. And of the two districts that are 60 to 70 percent, one is elected -- elects a minority representative.

If you took those sixty districts and you combined them into thirty districts, and I did this in a way -- intending to try and preserve the maximum minority representations, I could have done it in a way that would have been to diffuse it even more -- when I took the sixty districts and put them into couples or pairs of thirty, you begin to see the dilution that we talked about up there, and when you go to fifteen, you see the dilution even more.

So, as you take those districts, you don't do any redistricting, but you are just combining them, and within a specific plan, within any specific plan, the change in size has that dilution effect.

1 This is, by no means, the best sixty-district  
2 plan that can be drawn for minority representation or  
3 the worst sixty-district plan that could be drawn.  
4 It passed muster with the Justice Department, but a  
5 better plan probably could have been drawn and a  
6 worse plan might have been able to pass muster in a  
7 particular time.  
8

9 We did the same thing with the Council  
0 Districts, to combine the thirty-five Council  
1 Districts into seventeen and a half districts, and  
2 you see the same effect there.

3 The next page just shows the current Assembly,  
4 Council, Senate and Congress Districts, and then a  
5 prototype plan that we did when we were considering  
6 the nineteen-member upper house, and we'll come back  
7 to this later when we compare some aspects of this to  
8 the prototype plans.

9 But, basically, my conclusion is, that within  
0 any of these plans, size matters, that in a  
1 particular plan, at a particular level, at a  
2 particular size, you can, as we've learned with our  
3 fifty-district system, do better or worse. So, at  
4 sixty or at thirty-five, you can do better or worse,  
5 but at thirty-five, you can't do, with the same

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desire, you can't do as well at thirty-five as you can do at sixty, that given the plan, you have that dilution by combining the districts.

The next page is an informational listing of the Assembly Districts with percentage black and percentage Hispanic population, that's two pages. In my copy, at least, that's followed by a blank page, but that's probably just a mistake in mine.

Then we see where we did the combining, this next set of pages is where we took the couples of Assembly Districts and put them together, that's three pages long, and it corresponds to the summary chart we showed earlier.

After that, is where we put groups of four Assembly Districts, four contiguous Assembly Districts together.

The next five pages are the maps of the Assembly Districts. So, for example, the first map, if you look at the first map, which is the Bronx County 1984 Assembly Districts, the Assembly District we were talking about before was the 82nd Assembly District. The 82nd Assembly District has a minority population of 72 percent, but when you move to the Council Districts in the 1980 census, when you move

1  
2 to the Council Districts in that part of the Bronx,  
3 the 10th and 14th Council Districts, they are 27  
4 percent minority and 54 percent minority.

5 So there are five maps of Assembly Districts,  
6 followed by the same type of informational sheet on  
7 the Council Districts, simply showing the black and  
8 Hispanic portion of the Council Districts; followed  
9 by a chart where we combined the Council Districts,  
0 excepted for one, into pairs, to get the seventeen  
11 and a half district system.

12 That's followed by the five Council Districts.  
13 It's then followed by the prototype, the map is  
14 followed by a one-page prototype we did of one  
15 possible nineteen-member body with Borough  
16 Presidents. That's followed by a summary of the  
17 three prototypes we did of fifty-district Council  
18 systems, followed by the detail on the maximizing  
19 version, followed by the maps for the maximizing  
20 version. And I'll do one -- before we throw it open  
21 to questions, I'll do one comparative thing on the  
22 maximizing version, compared to both the current  
23 Council Districts, compared to the current Council  
24 Districts.

25 In the current Council Districts, there are,

1 as we said earlier, ten of the districts are 70  
2 percent or more minority, 28.6 percent here for this  
3 prototype system of fifty, that's 36 percent, and for  
4 the total number of districts over sixty it goes from  
5 34 percent to 40. But an interesting phenomenon  
6 here, given the first issue which is --

7  
8 COMMISSIONER GRIBETZ: Frank, I'm lost. I  
9 might as well say it, I'm not the only one lost.

10 After you finish your maps of Queens County  
11 Council Districts, you then said you were approaching  
12 a prototype system --

13 MR. MAURO: This is what we did when we were  
14 running-- that's the first fifty-district system.

15 THE CHAIRMAN: But there's a summary of that  
16 before -- the page before it is the summary page.

17 COMMISSIONER GRIBETZ: Show me.

18 THE CHAIRMAN: It looks like this, Judah.

19 COMMISSIONER GRIBETZ: I see. Prototype.  
20 Where is version one?

21 MR. MAURO: Version one is shown in detail  
22 here. It's the computer printouts following the  
23 summary table.

24 COMMISSIONER GRIBETZ: Got it. But it talks  
25 about eight districts. I thought you were talking

about fifty.

MR. MAURO: It is fifty, but eighteen of  
the --

COMMISSIONER GRIBETZ: I'm lost.

MR. MAURO: That's the Bronx. The first page  
is the Bronx.

COMMISSIONER GRIBETZ: The Bronx, I see.

MR. MAURO: And then a summary page for the  
Bronx.

COMMISSIONER GRIBETZ: Got it.

MR. MAURO: And then a detail page for Kings.

COMMISSIONER GRIBETZ: Got it.

MR. MAURO: And then a summary page for Kings.

COMMISSIONER GRIBETZ: I guess I was the only  
one confused. Everybody else was on the mark.

COMMISSIONER MOLLOY: You're the only one who  
knew where you were confused.

COMMISSIONER MURPHY: Would you number the  
pages for us and tell us what's on each page? We're  
all a little disoriented.

MR. MAURO: Okay.

COMMISSIONER GRIBETZ: It's coming out now,  
you see.

MR. MAURO: In terms of the criteria that you

use, this plan, as I said, is not necessarily the best plan that could be drawn to maximize minority representation. It shows that this level of districts that are likely to elect candidates of the choice of minority voters is possible, but it doesn't -- we have no way of knowing if this is the absolute best plan that can be drawn.

An interesting aspect of this plan is the effect that it has on the potential for Hispanic representation. One of the interesting things --

COMMISSIONER GRIBETZ: Which plan, which version?

5 MR. MAURO: Version one. One of the  
6 interesting things about it, compared to the current  
7 Council plan and current Assembly District plan is  
8 the effect it has on the number of districts with a  
9 Hispanic plurality and the overwhelming majority of  
10 the minority districts are mixed districts. There  
11 are some districts that are -- that all the minority  
12 population is black, but there are no Hispanic  
13 districts that elect Hispanic candidates or would  
14 potentially elect candidate of Hispanic voters  
15 choice, that is as overwhelmingly Hispanic as the  
16 black districts are overwhelmingly black, and that's



because of the difference in racial segregation in the City.

1 For the assembly, for example, which is a  
5 sixty-district system, there is no Assembly District  
5 in the City that has more than 61 percent Hispanic  
7 population and it falls off very quickly. Senator  
8 Serrano's district, for example is 58 percent  
9 Hispanic but in the nineties in the minority  
0 population. Senator Diaz is 57 percent Hispanic.  
1 Another one is 51 percent, 50, 48, 46. So, the  
drop-off is very, very quick.

3 Interestingly enough, all of the districts  
4 that have a minority majority and a black plurality,  
elect either black representatives or, in a couple of  
cases, white representatives. The only case where a  
7 member of a minority group is the elected  
18 representative in a district where that member's  
19 racial or ethnic group is not the plurality, is the  
20 district we started with in Queens, where a black  
21 Assemblywoman, who represents a 69 percent minority  
22 district, but where the Hispanic population is  
23 greater than the black population.

24 The usual rule is, in all the other cases  
25 where a minority representative has been elected is,

1 the district is overwhelmingly minority, and the  
2 person elected is from the plurality group, that if  
3 there's a black plurality, the minority  
4 representative is black, if there is an Hispanic  
5 plurality, the elected representative is Hispanic.  
6

7 THE CHAIRMAN: You were saying, Frank, you  
8 then went off into the theory of it, you were saying  
9 under the fifty plan.

10 MR. MAURO: Under the fifty plan, the number  
11 of districts that have a Hispanic plurality is -- if  
12 you use the 70 percent threshold, is 14 percent,  
13 seven districts, if you use the 60 percent threshold,  
14 it's 18 percent. For the -- interestingly enough,  
15 that 18 percent of the districts with Hispanic  
16 plurality compares to 14 percent for the current  
17 Council and 13 percent for the current sixty-district  
18 Assembly system in terms of the districts that are  
19 are plurality Hispanic.

20 In terms of --

21 COMMISSIONER BETAZOS: Could you go over those  
22 numbers once more?

23 MR. MAURO: Yes, in fact, what we'll do is,  
24 just to use an example, why don't we go to the  
25 prototype charts for the version one, starting with

1 the Bronx. It's the computer printout at the end.

2 we'll just go through --

3 COMMISSIONER BETAZOS: It looks like this --

4  
5 MR. MAURO: Yes. The fifty-district system  
6 creates the following districts with Hispanic  
7 plurality. It creates nine districts with a Hispanic  
8 plurality. My guess would be that seven or eight of  
9 them would probably elect Hispanics, but not all of  
10 them, even though there's a Hispanic plurality and  
11 I'll show you some of the reasons. But the districts  
12 are Bronx 4, Bronx 7 and Bronx 8 on that page; all  
13 have significant minority majority. They have 93  
14 percent, 92 percent and 81 percent, and within the --

15 COMMISSIONER MURPHY: What you're describing  
16 now verbally, is that pictured in the simulation maps  
17 at the end of the list?

18 MR. MAURO: No, the simulation maps just show  
19 the districts. You can just match them up to see  
20 where they are.

21 COMMISSIONER MURPHY: You're verbally  
22 describing a percentage and what districts might  
23 become whatever. Is that reflected?

24 MR. MAURO: No, it's reflected on the chart.  
25 You look at the chart. The map just shows where they

1 are.

2 EXECUTIVE DIRECTOR LANE: But those are the  
3 districts about which --

4 MR. MAURO: Oh, you could write it on the  
5 chart, if you want to.

6 COMMISSIONER MURPHY: You just said District 6  
7 would be --

8 MR. MAURO: Yes, you could write it on the  
9 map.

COMMISSIONER GRIBETZ: Is the simulated  
districts version one, two or three, is that your  
question?

3 MR. MAURO: No, no, he wanted to know if the  
15 map --

6 COMMISSIONER GRIBETZ: We have maps in the  
7 back and Pat was saying that if I want to look at a  
8 map, what am I looking at with respect to the  
19 versions?

0 MR. MAURO: You're looking always at the  
21 maximizing version, that's all that's here.

22 COMMISSIONER MURPHY: And that's the one he's  
23 verbally describing now, is that right.

24 COMMISSIONER GRIBETZ: Which is which version?

25 MR. MAURO: Version one. We were running

1 through the districts that had the minority  
2 majorities and Hispanic plurities. In the Bronx,  
3 it's Bronx 4, Bronx 7 and Bronx 8.  
4

5 The next borough is Brooklyn, listed here  
6 under it's county name, and the -- Kings 1 and Kings  
7 2, both have Hispanic plurities.

8 COMMISSIONER GRIBETZ: Is the gerrymandering  
9 concept still alive?

10 THE CHAIRMAN: It is barely alive. These  
11 districts are of the shape which is common to  
12 districting in the United States of America and the  
13 State of New York.

14 COMMISSIONER GRIBETZ: I see.

15 COMMISSIONER TRAGER: It means it's very much  
16 alive.

17 COMMISSIONER GRIBETZ: Let's just take the  
18 Bronx simulation.

19 THE CHAIRMAN: Judah, another thought is, the  
20 Justice Department encourages one to gerrymander for  
21 the purpose of producing minority districts.

22 COMMISSIONER GRIBETZ: I appreciate that, and  
23 I was -- I might have been accused of asking a  
24 leading question to begin to discuss something that,  
25 perhaps, we may discuss later, which might be

relevant to what we are looking at now. We may be discussing later, service delivery and coterminality of districts, the relationship of the district to the Councilperson, et cetera; is that correct?

6 THE CHAIRMAN: It's a subject for discussion.

7 COMMISSIONER GRIBETZ: And, therefore, I'm  
8 just looking at the Bronx in simulation A in that  
9 context, about, you know, at least physical  
attributes of the district.

2 COMMISSIONER MURPHY: District 7 in the Bronx,  
3 which you just described as the potential for being a  
4 Hispanic plurality?

5 MR. MAURO: Yes.

15 COMMISSIONER TRAGER: It's more than a  
16 reality.

17 COMMISSIONER MURPHY: You don't think anyone  
18 would actually create a district that looked like  
19 that.

20 THE CHAIRMAN: If you go back, Pat, to the  
21 existing districts for -- go to Bronx County Assembly  
22 Districts, they are twisting and turning around, and  
23 the Justice Department encourages the drawing of  
24 lines for the purpose of enhancing minority voting.

25 COMMISSIONER RICHLAND: That is when these

various minorities can be identified, as, for instance, after Afro American, the native Afro American is not the same as the West Indian, is not the same as the black Puerto Rican, is not the same as the black Cuban. Now, which is the minority in that group? You get that all over the place. Asian, Chinese, Korean, Japanese, Vietnamese. These are groups that tend to move together, but don't have a real interest in common except the circumstance that there was space available. The same is true of white people that are present in an area that is dominated by Lubavichas and Satmars with whom they have nothing in common. And I took advantage of the circumstance that I had a headache and had to get out for a few minutes to walk out in my old stamping ground, Washington Square, to look at the magnificent diversity of our City. There is every minority present.

COMMISSIONER FRIENDLY: And, therefore, Bernie?

COMMISSIONER RICHLAND: And, therefore, what are we talking about? What do mean by a minority, how do you describe it, how do you deal with it? And in addition to that, in addition to that, it keeps

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changing.

COMMISSIONER TRAGER: Bernie, I think Frank was going to try to answer you.

MR. MAURO: I think Bernie's correct in terms of actual situation in New York, but the Justice Department doesn't look at every minority, it looks at certain protected classes under the statute, and it looks at large minorities, minorities that make up a significant enough portion of the population to have the chance to elect representatives of their choice if districting is done in a way that can allow that.

COMMISSIONER RICHLAND: Frank, isn't that usually used in a place like Mississippi where the black minority is the Afro American minority?

THE CHAIRMAN: Bernie, just to point out, New York City, we don't need to compare it it with any geographical area, but the fact is that minorities have a hard time getting elected in New York City for lots of reasons. Also the fact is, we are covered by the Voting Rights Act for reasons of law, and all we can do is try and deal, as best we can, with the objective. We are not going to do something that's perfect, but we can move the ball along, and that's



1 what we are trying to do to help deal with a subject  
2 which reflects historical prejudice, reflects issues  
3 of citizenship, reflects issues of poverty, reflects  
4 issues of age, and to try and construct a system  
5 which advances the ball of having the minorities of  
6 this City have a chance to, that is greater than now,  
7 to get elected, and I think we can and should.

8  
9 COMMISSIONER TRAGER: Can we go back to  
0 Judah's question and end this diversion?

1 COMMISSIONER RICHLAND: I have credentials in  
2 this whole fight for equality and decent treatment  
3 for all people.

4 THE CHAIRMAN: You certainly do, Bernie.

5 COMMISSIONER GRIBETZ: I'm finished. I want to  
6 hear Frank. I made the point that we should be alert  
7 when we go to the next -- it may not be possible, and  
8 if we have choices, clearly, the choice of  
9 representation prevails.

10 MR. MAURO: Just to finish this quickly. We  
11 finished Kings. If we go to Manhattan, and here we  
12 have one of the districts that has a plurality  
13 Hispanic population, but might elect an Asian or a  
14 Hispanic or someone else. Manhattan District 3 has a  
15 minority population of 76 percent, but it's spread

out very evenly among various ethnic groups.

COMMISSIONER TRAGER: Manhattan 3? Okay.

MR. MAURO: Manhattan District 3.

COMMISSIONER TRAGER: Okay.

MR. MAURO: Then the other plurality Hispanic districts are Manhattan 7 and Manhattan 9, are plurality Hispanic districts. And in Queens, Queens 3, but, again, while it's a plurality Hispanic district, that district, because of voting patterns, is probably more likely to elect a black representative, but in terms of the change from the current system, in terms of percentages, the number of districts is up from -- plurality Hispanic districts goes from 18 percent for the -- goes from 14 percent for the current Council and 13 percent for the current Assembly to 18 percent, and the potential for districts goes from -- for electoral victory goes three in the current Council, three out of thirty-five, to seven or eight. I doubt if nine would be a possibility, even those there's nine districts, to seven or eight out of fifty, so a much higher percentage.

All of this gets back to the issue of how the districts are drawn and our little summary c of

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version one, two and three. Version one we said was  
an attempt to maximize, and they did. We can't say  
they did maximize. Version two, attempt to minimize,  
and version three, where we said to be neutral, we  
said use the existing community board boundaries as  
your starting point, and do building blocks of  
community boards, and that's what they did for  
version three. They built that off of the existing  
community districts.

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THE CHAIRMAN: Now, a question from Nat.

SECRETARY LEVENTHAL: Did I miss where we got  
the number fifty from and why that is the basis for  
our analysis?

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MR. MAURO: Well, the number fifty is an  
attempt to balance two issues, an attempt to balance  
minority representation with workability, is the  
balance. We know we can reach a reflective  
percentage, 40 percent, and we also had a concern  
with creating a body that was in a workable range.

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We just -- we had to pay to do these things,  
so we couldn't say do every size for us in the world.

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COMMISSIONER GRIBETZ: With respect to the  
other commission?

MR. MAURO: Yes.

1  
2 COMMISSIONER GRIBETZ: Am I still a member?

3 MR. MAURO: I think so.

4 COMMISSIONER FRIENDLY: You can answer this in  
5 two sentences.

6 MR. MAURO: Yes?

7 COMMISSIONER FRIENDLY: You began your super  
8 presentation by saying -- I thought you said, that  
9 where there is a minority of 70 percent, they elect a  
10 white.

11 MR. MAURO: In some cases, yes.

12 COMMISSIONER FRIENDLY: I don't understand  
13 that at all. Having done some work in my past life  
14 about how people vote. I can't understand how that  
15 happens.

16 MR. MAURO: Okay. It's what we discussed a  
17 week or so ago, that the first issue is, that the  
18 population percentage is not necessarily the  
19 citizenship population, isn't necessarily the  
20 citizenship voting age population and isn't  
1 necessarily the citizenship voting age population  
2 that registers and votes.

3 COMMISSIONER FRIENDLY: Are you saying more  
4 whites vote per percentage per person --

5 MR. MAURO: For example, in the current

1 Assembly system, there is an Assembly District --  
2 I'll just get the actual number -- Assembly District  
3 54 in Brooklyn, which is 81 percent minority with 48  
4 percent Hispanics or significant Hispanic minority --

5 COMMISSIONER FRIENDLY: 81 percent --

6 MR. MAURO: -- minority 81 percent minority,  
7 both black an Hispanic, black percentage is 33,  
8 Hispanic percentage is 48, and because of the mix  
9 there, it's not quite the one-third, one-third,  
10 one-third, but it's getting close to that.

11 COMMISSIONER FRIENDLY: And the rest is white?

12 MR. MAURO: Yes, and the representative is  
13 white.

14 COMMISSIONER GRIBETZ: Eddie Abramson.

15 MR. MAURO: No, that's Tom Catapano.

16 COMMISSIONER FRIENDLY: I'm almost through  
17 with it. And the bottom line is, that because the  
18 blacks and Hispanics, if I hear you right, don't vote  
19 with the frequency --

20 THE CHAIRMAN: Well, remember, it is not just,  
21 Fred. It is not eligible to vote. There's a higher  
22 percentage of people under eighteen.

23 COMMISSIONER TRAGER: For whatever reason.

24 THE CHAIRMAN: But I think "don't vote"  
25

1 implies "choose not to vote" as opposed to not being  
2 of age or not being a citizen.

3 MR. MAURO: It's can't or don't.

4 COMMISSIONER FRIENDLY: And that's the way it  
5 comes out --

6 COMMISSIONER TRAGER: We don't really have any  
7 final statistics about a percentage that actually  
8 ended up in voting. I think you can only go by these  
9 exit polls if, in fact, they --

10 COMMISSIONER FRIENDLY: More people in the  
11 exit polls, or however you measure that, who can vote  
12 because of age or because of their willingness to  
13 register, and so forth, is what causes that  
14 enormous --

15 MR. MAURO: That's a guess, and in some cases,  
16 I think you would also guess that -- in some cases, a  
17 white might be the candidate of choice of Hispanic  
18 voters.

19 COMMISSIONER FRIENDLY: Identifies all the  
20 ways people measure how people are going to vote.

21 MR. MAURO: I know, but in some cases, it is  
22 true, so that a white candidate might be the  
23 candidate of choice.

24 THE CHAIRMAN: Fred, to really simplify even  
25

further, the data seems to show, definitely in New York and outside of New York as well, that you need -- for a minority to have a reasonably effective chance of being elected, you need a quite high percentage.

The data further seems to show that if you alter the size of the districts by making the districts smaller, you increase the number of districts where there will be a quite high percentage. This is assuming that, in both cases, you have redistrictors of good will, because that's a factor, also. But keeping that factor constant, the data seems to show that if you reduce the size of the district, you're going to increase the percentage of districts where there are these high percentages of minorities in the districts and, therefore, you're going to give an increase in opportunity to win. It doesn't mean it's guaranteed.

COMMISSIONER FRIENDLY: And that's the bottom line of this lesson.

THE CHAIRMAN: That is the bottom line of this lesson.

COMMISSIONER MURRAY: I think there's one other lesson, and it is, where you have two

1 minorities in one district, they may not necessarily  
2 come together and form a coalition.

3 COMMISSIONER FRIENDLY: They cancel each other  
4 out.

5 THE CHAIRMAN: I would like to suggest a  
6 five-minute recess, unless there are more questions  
7 of Frank on the facts, which we should finish.

8 COMMISSIONER BETANZOS: Considering the  
9 comments, that that's why I found the fact of the  
10 traditional of what was happening to specific  
11 Hispanic areas very important, because I really don't  
12 believe that lumping them together is meaningful at  
13 all.

14 MR. MAURO: Right, and I think that's why in  
15 the, say in the district in Queens, even in this  
16 prototype it shows up with a Hispanic plurality,  
17 would be unlikely to elect an Hispanic and in that  
18 Lower East Side district -- I mean, it could elect an  
19 Hispanic, but it could elect an Asian, it could elect  
20 a white. There's no way of knowing what it would  
21 elect.

22 THE CHAIRMAN: All right. I was suggesting a  
23 minor recess, but perhaps the people down here have  
24 suggested bringing it to a vote. Does someone want  
25



to make a motion?

Yes, Sy.

COMMISSIONER GOURDINE: The conclusion that we're to reach is, assuming that we had people on the redistricting panel of, "good will," and they work real hard at maximizing minority participation, and we increase the number of members of the Council from thirty-five to fifty, we could look for an increase from, roughly -- what, 26 percent today?

(Continued on next page.)

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1 THE CHAIRMAN: Yes.

2 COMMISSIONER GOURDINE: To 36 percent.

3 THE CHAIRMAN: Yes.

4 COMMISSIONER GRIBETZ: That is a beautiful  
5 motion.

6 Wasn't that your motion?

7 COMMISSIONER GOURDINE: To answer your  
8 question, I'm very much in favor of increasing the  
9 number of Council members, and Judah, I always take  
0 cues from you, so I'll make that motion.

1 COMMISSIONER GRIBETZ: Okay.

2 THE CHAIRMAN: I think now, for our  
3 legislative record, or our record, it is important  
4 to add another fact. If the number is fifty or  
5 forty-nine or fifty-one -- maybe it should be  
6 fifty-one so it is an odd number --

7 COMMISSIONER GRIBETZ: The range of forty-nine  
8 to fifty-one.

9 THE CHAIRMAN: It is better to have an odd  
0 number.

1 COMMISSIONER GRIBETZ: You want a flexibility  
2 satisfactorily with to the staff, a range of  
3 forty-nine to fifty-one.

4 THE CHAIRMAN: forty-nine or fifty-one.

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HELD AT  
ADAM CLAYTON POWELL OFFICE BUILDING  
New York, New York  
June 15, 1989  
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2 THE CHAIRMAN: Okay, if the meeting can  
3 come to order. Is there a person who can ask  
4 whether there's a need for signing assistance? Is  
5 there a need for signing assistance?

6 No? Okay.

7 What I think we might want to do today is  
8 spend some time sort of summarizing in our own  
9 minds where we are. I'd like to start with what I  
10 feel are lessons and values that we've gotten from  
11 our extensive outreach and hearings and then spend  
12 a little bit of time on the ideas I have for  
13 supplementing or changing the proposals, the  
14 preliminary proposals, which we distributed to the  
15 public and then turn the meeting over to all  
16 members of the Commission to talk in the same vein  
17 or however else they're moved about the process  
18 we've gone through and where we should be going.

19 We're also going to be giving out extensive  
20 drafts that Eric and the staff have prepared. I  
21 don't contemplate it today we should be going over  
22 any drafts, we need to read all these. I don't  
23 contemplate today we should be taking any votes.

24 We will, before the end of the day, hand  
25 out a proposed agenda for our remaining meetings

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with ideas of what we would take up at each session.

Let me start first by expressing, first to the staff of this Commission our thanks, and I think I can put it as our collective thanks, for the incredible work they have been doing over the whole process of this Commission, and certainly over the last several weeks, producing papers -- and you ain't seen nothing yet as far as the papers go -- scheduling all these meetings, and the number of meetings that we've had all over the City with all kinds of groups is, I think, unparalleled for any governmental body, and giving us general support in answering our questions.

The second, I would like to express my personal thanks to the Commissioners for precisely is the same thing. How much time and effort and caring has gone into all of the Commissioners' work.

As I said, I think our outreach has been unparalleled, not only our public hearings, but the forums we've had, the letters we've read, the letters which can be stacked up to the ceiling, the meetings we've had, and the extensive

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discussions we've had with people in all boroughs, in all walks of life, fully reflecting the diversity of this City.

I mean, I could go through, for example, just where I was yesterday, in the meeting in the morning with church leaders from Brooklyn and Queens, a meeting with the National Hispanic Business Conference, a meeting with Chinese and other Asian leaders. It has been, I think, for me, personally, a fantastic experience and I know it's been for all the Commissioners.

As a personal view of what we've -- what I feel I've learned, anyway, in all of this, the first is the incredible yearning of New York City's citizens and residents for services. We talk a lot about structure, the yearning is for services.

Secondly, the yearning for equity, equity among communities, equity among if races. That's a powerful urge in our City.

And, finally, the yearning to be heard. I think those three points have been vital themes the in our testimony that underlie and, in a way, shadow and override the testimony we've also

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received about structure and officeholders.

Our job is to hear all those voices, we have to recognize the voices are discordant, they often come from diametrically opposed directions on looking at the same problem and seeing it from diametrically different directions.

So the voices are discordant, and our job is to harmonize, to seek the best from those voices, not to compromise, but to harmonize and to seek the best.

How to approach our task as we go forward, just briefly.

I think we should recognize that if anybody supported us one hundred percent, it would be a pretty sure sign that we were wrong. And we shouldn't be surprised that people from different perspectives see the world differently than we do.

Obviously, there's much merit in criticism we've received, and I think all of us have ideas, I know I do, of how we should respond to that criticism affirmatively because much of it has been powerful and insightful.

But we should also understand that everybody from their own perspective, naturally

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enough, is trying to be advocates, trying to leverage us; that's just what they should be doing.

We have to also remember, we're seeking a balance on these difficult issues, among our particular proposals and looking at the proposals as a whole.

We have, however, heard useful things that I believe have raised all our consciousness, have made us more attentive to things that could be improved, and I am absolutely confident we will emerge from this stage -- having started with good proposals, we're going to emerge from this stage with better proposals.

Now, just briefly, to highlight some of the things that, in my judgment, we ought to either change from our preliminary proposals or how to answer questions that we posed to the public ourselves.

I'd like to start with the City Council, and what I'm going to do is take this paper and by no means do it all, but just summarize the highlights. I'd like to start with the City Council because we've always made fair

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representation a centerpiece of our thinking.

To have an independent budget office, I think, enhances the credibility of the Council and enhances the independence or strength of individual committee chairs. That the officers, the committee chairs of the Council, who get salaries plus lu-lus, whatever that stands for, salaries plus special payments, leadership allowances, that those should be established by law and not subject to the discretion of a single person.

That the Charter should provide the things we mention in here, the election of chairs of standing commissions, the committees rather, the sponsor of a proposal all be able to require committee action and a majority of the members of the Council be able to discharge.

And, finally, that we should ask Frank Mauro, in light of the extensive public testimony from quite varied groups in support of a City Council enlarged slightly further than the 49/51 that we suggested, that the staff ought to analyze the effect on fair and effective representation of racial and language groups protected by the Voting

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Rights Act of slightly enlarging the Council.

Redistricting, I think you can just read what's in here. It's terribly important. There is great anxiety among, particularly, racial and language groups protected by the Voting Rights Act, that for all our good intentions it won't work well. We've already done the single most important thing, which was the criteria for redistricting we passed, but here there are proposed some other procedural suggestions that will help make the public confident that our objectives will be met.

And on the appointments to the body that the 1983 Charter, in reaction to the failure by the Council in 1981 to redistrict properly, went too far in giving too many appointments to the Mayor, there should be greater variety in the appointments, the methodology is set out here.

Land use -- have we handed out the longer paper? Gretchen, have we handled out to the members the longer paper? We should --

MS. TOOLE: No, it's on its way.

THE CHAIRMAN: It's on its way, okay.

Just do try and summarize the land use, and

1  
2 this is extensive to summarize it.

3           There was a yearning in the hearings from  
4 the people with very different perspectives for  
5 more planning. I think we can have a workable  
6 system of more planning.

7           There was a yearning, again, from people  
8 with very different perspectives, for a system  
9 where the standards for siting are known and  
10 equity among communities is one of the standards  
11 for siting.

12           I believe, again, we can put in the Charter  
13 the broadest standards, and then, by rulemaking  
14 subject to the Council, have equitable and fair  
15 and understandable standards for siting.

16           There are ways, I believe, to give a more  
17 realistic local voice in site selection. And just  
18 to go off on that for a second, I think we can  
19 provide for after the administration comes up with  
20 ideas on needs which would not be site specific,  
21 to give the Borough President, after consultation  
22 with the Community Boards, the option of proposing  
23 a site for a City use, with an incentive to do so.  
24 And the incentive to do so would be that if the  
25 Borough President proposes such a site -- this is

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all laid out in greater detail, which you'll read -- but if the Borough President proposes such a site, and the City agency concludes to go with another site, which they would have the right to do, they'd have to say why they're going with the other site, and then, when the matter wends its way up to the City Planning Commission, if the agency has not gone with the Borough Presidents, that is, the more localized view of where the use should be, where the site should be, then it would take a super majority of seven, instead of four, to pass in the City Planning Commission.

(Continued on the next page.)

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MINUTES  
OF  
PUBLIC MEETING  
OF THE  
CHARTER REVISION COMMISSION

HELD AT

BROOKLYN LAW SCHOOL  
250 Joralemon Street  
Brooklyn, New York

June 22, 1989  
9:00 o'clock a.m.

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take it out.

Frank, let's see, what else do we have?

MR. MAURO: The next thing is on the bottom of 2A-6. We are going to get to the criteria in a minute, but in order to give some strength to the criterion, it's not an absolute, but it does give some strength to the it. It says that with their final plan, they have to submit a statement signed by at least six members of the Commission, certifying that within the constraint of Subdivision A, which is the population of quality constraint, the criterior -- the other criteria have been applied in the order in which they are listed, which is the current requirement, and that such criteria -- the new part is, that such criteria have been implemented to the maximum extent possible.

So, they have done as good a job as they could on the other criteria, including the fair and effective representation of protective minorities; that such certification shall also set forth the manner in which the Commission implemented the requirements of Subdivision B of Section 52. And this idea came from a meeting

1  
2 that we had with the black and Puerto Rican caucus  
3 of the State Legislature who felt that in the  
4 proposal we were making, that unless -- they tried  
5 to come up with ideas to give some greater force  
6 to the criteria, and this was an idea that came  
7 out of that discussion, which we thought was a  
8 good idea, and it was adopted by the Commission in  
9 the preliminary proposals, is a certification that  
10 they have done as good a job as they think they  
11 can do -- that they have done.

12 THE CHAIRMAN: Maybe you should get to the  
13 criteria.

14 MR. MAURO: Okay. Now we go to page 287,  
15 which is the criteria. Criteria A is, obviously,  
16 the bottom line, that the districts cannot  
17 exceed -- that the the population deviation cannot  
18 be more than ten percent. That's a rough rule of  
19 thumb by the courts, that state and local  
20 reapportionments can generally deviate by up to  
21 ten percent, unless there is significant  
22 justification.

23 There are some people who argue that this  
24 ten percent has to be more rigorous, that ten  
25 percent is too much. What we add to that is, that

1  
2 any such differences in population must be  
3 justified by the other criteria set forth in the  
4 section, that you can't have deviations unless you  
5 need them, to accomplish one or the other  
6 objectives.

7 Now we go to the other objectives. B is a  
8 new objective that the Commission proposed. Such  
9 districting plans shall be established in a manner  
10 that insures the fair and effective representation  
11 of the racial and language minority groups in New  
12 York City, which are protected by the United  
13 States Voting Rights Act of 1965 as amended.

14 The second criteria is an existing one, but  
15 we simply moved it up in the rank order. To the  
16 extent practicable, district lines shall keep  
17 intact, neighborhoods and communities with  
18 established ties of common interest and  
19 associations, whether historical, racial,  
20 economic, ethnic, religious or other.

21 The other criteria are the same until we  
22 are down to the bottom of 2A-7, where we move from  
23 the Community District Section we did the other  
24 day, the idea that the boundaries, not the  
25 districts, that will use community district



1  
2 boundaries, the lines, as much as possible, not  
3 that the districts will be the same.

4 Then we say, if any district includes  
5 territory in two boroughs, then no other district  
6 may also include territory from the same two  
7 boroughs. In other words, you shouldn't have to  
8 cross the same borough lines more than once.  
9 That's not necessary for population of quality,  
10 and that E is the one we moved up to higher on the  
11 list, the E that's bracketed.

12 THE CHAIRMAN: All right. So, if it's  
13 possible to get the study over the weekend, it  
14 will be helpful.

15 COMMISSIONER PAREDES: Mr. Chairman, can we  
16 go back to C on 28-7?

17 THE CHAIRMAN: 2A-7C.

18 COMMISSIONER PAREDES: You inserted there  
19 the word, "religious or other."

20 THE CHAIRMAN: It's in there already.

21 MR. MAURO: Go to the last page, Mario, the  
22 2A-8. Go to the last page. We didn't insert  
23 this, we just changed its --

24 THE CHAIRMAN: The words, "or other" are  
25 added.

1  
2 MR. MAURO: It's existing language, E,  
3 which we are making only one change in, adding "or  
4 other," and moving it up in its priority order on  
5 the list. So, this is existing law, and we are  
6 just changing its place, which is why it's  
7 bracketed here and underlined on the previous  
8 page.

9 COMMISSIONER PAREDES: Okay.

10 THE CHAIRMAN: Okay. Now moving to the  
11 Council.

12 COMMISSIONER MOLLOY: This is the easy  
13 part.

14 EXECUTIVE DIRECTOR LANE: No, this was the  
15 hard part.

16 THE CHAIRMAN: No, it's, obviously --  
17 districting is incredibly important to people and  
18 it is the step of implementation that is  
19 incredibly important and about which people feel  
20 deeply, as they should.

21 EXECUTIVE DIRECTOR LANE: Turning now --  
22 you have a section in front of you called, "The  
23 Council," Chapter 2. We're turning to to page 21.  
24 Chapter 2, right in front of you. It's not in  
25 your book. We handed it out this morning. It's

1  
2 in your book, also.

3 THE CHAIRMAN: It was in the book we got  
4 last Friday.

5 EXECUTIVE DIRECTOR LANE: This is where  
6 some changes where we told everyone we're going to  
7 make some cleanups. It's probably under your pile  
8 there. Keep going. We'll give you another one if  
9 you don't have one..

10 COMMISSIONER MOLLOY: Thank you.

11 EXECUTIVE DIRECTOR LANE: Section 21.  
12 Basically, what we are doing is, just cleaning up  
13 some sloppiness in drafting. There's nothing new  
14 in Section 21, except to change it and put the  
15 Council first, and say that there shall be a  
16 Council which shall be the legislative body of the  
17 City, and the second part that we do is, since the  
18 Council is able to do more than just legislative  
19 power, we make sure that it has the power not only  
20 to legislate, but to do the other things that are  
21 assigned to it in the Charter if people don't  
22 think it's legislative activity.

23 Section 22, we are going to come back to,  
24 per Fritz' comments earlier with respect to the  
25 number, and whether you put down the number of the