

N.Y. Redistricting Conference: What Happened and What's Next?
Cervas Keynote Address
June 18, 2024

1. Ladies and gentlemen, esteemed colleagues and guests, good morning! It is a great honor to stand before you today at this important conference dedicated to the topic of New York redistricting and redistricting reform.
2. Prof. Wice has asked me to use this time to talk about my experience regarding New York and redistricting.
3. My involvement with New York redistricting came quite late in the process. While the events leading up to the Harkenrider case were unfolding, I was frequently traveling the Pennsylvania Turnpike between Pittsburgh and Harrisburg, negotiating my home state's legislative districts. That, too, was contentious and resulted in a lawsuit brought before the U.S. Supreme Court, though certiorari was not granted.
4. The reapportionment process in Pennsylvania involved politicians, which was a significant departure from my usual work with courts. Pennsylvania now stands out as the only state with a split partisan control between the upper and lower chambers. Moreover, the legislative compositions closely reflect the state's partisan makeup, ensuring that both chambers will remain competitive throughout the decade.
5. I will save the detailed stories of Pennsylvania's reapportionment for another day and another conference. However, one crucial lesson I learned from that experience is worth sharing: no one person can know everything or handle complex problems alone. It takes a dedicated team of individuals to be truly effective. I will return to this thought in a moment.
6. Relevant to this conference, I had the honor to serve as Special Master in 2022. That work proved to be difficult, contentious, and controversial. But it was also important work, and produced maps for which I am proud to be associated.

7. The post-2010 census cycle of redistricting created “The Great Gerrymander of 2012” and a national congressional map that resulted in minority rule. As the 2020 cycle concluded, many national Democrats believed that partisan gerrymandering around the country had again caused a pro-Republican advantage, and that a congressional district plan in New York could partially or fully offset those effects. Some of this worry was clearly warranted since several states utilized maps that were ruled illegal but were used in 2022 midterm election anyway.
8. After the Steuben County Supreme Court struck down the New York plan, that pro-Republican bias would be locked. After all, these actions in New York were happening in Spring of 2022, just a few months before the midterm. Other blue states like California, Colorado, and Washington, which themselves had truly independent commissions, failed to create their own gerrymanders. New York was seen as being critically important for offsetting partisan gerrymanders in Florida and Texas. The timing and the potential impact led to intense media focus on the actions of the court and myself.
9. I’ll leave aside the merit of the unilateral disarmament argument to partisans.
10. Chief Justice John Roberts said that partisan gerrymandering is a “political question” that “must find their resolution” outside the federal judiciary. This has clearly complicated the desire for a coherent national policy regulating extreme partisan gerrymandering and equality in representation.
11. As for the “political question” doctrine of the Robert’s court, take New York, for example: Democrats regularly win 60-70% of the vote. With 26 districts, how many should Democrats win? How easy should those victories be? And how much say should Republicans and independents have in drawing those districts?
12. As Roberts and others on the Supreme Court continue to reiterate, it is difficult to establish as standard that is equally applicable in every jurisdiction. But state

courts have been able to establish these standards. The Harkenrider case is a case in point.

13. Still, different standards govern different jurisdiction, and many states refuse to enforce the rules that voters have established. Other states refuse to set any standards at all, and often ignore federal laws like the Voting Rights Act. Often, the partisan balance of a state court is determinative of how far they are willing to go to strike down a plan based on partisanship.

14. The map I prepared for the court received mixed responses. Here are some notable ones:

15. Adam Kincaid, president and executive director of the National Republican Redistricting Trust, said, “Even the map proposed by Common Cause had a smaller pro-Democrat partisan bias. This map is a step in the right direction, but still unduly favors Democrats.”

16. Dave Wasserman, who has the Twitter handle @Redistrict, asked, “Were there worse outcomes for Dems in a special master map? Absolutely.”

17. Representative Hakeem Jeffries said, “The draft map is unacceptable, unconscionable, and unconstitutional.”

18. Though the media focused on the most sensational of the comments, plenty of individuals and groups offered praise of the map.

19. From my perspective, every map has some shortcomings. The redistricting process itself can also be challenging. That includes court remedial proceedings. If I may, I'd like to just say that I had a great team to assist my work in New York. As I already mentioned, among the valuable things I learned during PA reapportionment was the importance of having a quality team. The individuals on my New York team had various complementary backgrounds. These include perhaps the leading scholar on the Voting Rights Act, an alum from this law school who tracked the entirety of New

York redistricting and covered each community hearing held by the Redistricting Commission and drafted detailed notes at each of them, also a person who knows more about redistricting than practically anyone on the planet and who has deep ties to the New York City suburbs and an indispensable understanding of redistricting nationally, and finally a mapper who I have worked with on various occasions who is partially responsible for Congressional districts across the country. He also is among the smartest undergraduates I've ever worked with, was a finalist this year to be a Rhodes Scholar, and will be attending Berkley Law School this fall. Needless to say, I'm proud of the team I assembled.

20. The amount of negativity and pessimism about the remedial process is beyond tally. From my perspective, our work was transparent and collaborative. Not only did we have a hearing where people were invited to provide testimony and suggestions, I received thousands of correspondences from the public, members of Congress, and good governance and activist groups. These comments were read and those that made sense were implemented. Michael Li of the Brennan Center said after the map was finalized that "the final map actually shows a lot of responsiveness to community input. Which is how an iterative, good faith process is supposed to work."
21. Most typically, redistricting is done behind the scenes and the public's participation is either limited or ignored.
22. Those of us in this room understand the importance of redistricting and the impact both on people's lives and on partisan outcomes. Unfortunately, the same cannot be said about most people not in this room.
23. The public is woefully under-educated on these topics. Only a small fraction of the public submitted comments.

24. Many of those comments were what some have termed “astro-turf”, meaning it was artificial grassroots, usually organized by interests that were directly affected by the lines. To be clear, I mean the politicians who wished to run for office.
25. There are several organizations, such as the League of Women Voters, APAVoice, and Common Cause, that have been actively involved in redistricting efforts in both Pennsylvania and New York, as well as nationally. These organizations advocate for voters in a positive and effective manner, increasing public awareness about redistricting.
26. Additionally, resources like Dave’s Redistricting App, an free web mapping program, the Redistrict Network Twitter account, which offers a centralized source of breaking redistricting news and curated important developments, Redistricting & You at CUNY that allows users to easily view and compare maps, along with Professor Wice’s newsletter from New York Law School, have all contributed significantly to redistricting education. Despite their important work, these efforts remain underfunded.
27. In contrast to the hundreds of millions of dollars spent on partisan elections, funding for redistricting advocacy and education is severely lacking.
28. I now will return to the maps. The maps that we produced for the court resulted in immediate and sharp criticisms. At least the congressional map; the senate map seems to have escaped controversy, perhaps because there were no partisan consequences at stake.
29. Most of these criticisms were unjustified, in my opinion. For example, it was said that the map was enough to “make Jim Crow blush,” with an obvious allusion to the discriminatory actions to disenfranchise Blacks in the early 1900s. But these comments were not backed up with facts. The map fully complied with the Voting Rights Act. These districts naturally emerge from the political geography and demography. If anything, the map we prepared for the court had one additional

majority-minority district compared to the map the court struck down: one in downtown Manhattan.

30. The media obsessed over the pairing of incumbents in Manhattan. These pairings were unintentional. A prominent member of Congress said that drawing districts with two incumbents was “unconstitutional and unacceptable”. A largely forgotten or ignored fact was that New York, because of a lack of population growth, had lost a congressional district in apportionment, and all members were inevitably going to lose territory from their former districts. The new districts would, at best, only partially resemble the previous decade’s district.
31. All line drawing should be voter focused, not politician focused. This is the reason why voters, when given the option, always choose to take power of line drawing away from politicians. Plenty of research suggests that processes that exclude politicians are superior on practically every dimension, including less partisanship, a greater emphasis on minority rights, and greater satisfaction among voters. This includes maps drawn by independent commissions and courts.
32. Many criticisms of the court map revolved around the treatment of communities of interest. Determining which communities should be grouped together is the core challenge of redistricting. Inevitably, some communities will be split across multiple districts out of necessity, and others will find themselves in districts with communities they share little in common with. Redistricting is more of an art than a science. In fact, the number of possible combinations in a typical redistricting plan exceeds the number of atoms in the universe.
33. Let me comment on the division of Manhattan, which proved to be a media darling story. Though it may be true the Upper East Side and the Upper West Side had differences, I remain unconvinced that those differences were drastic enough to warrant combining more disparate communities like the Upper East Side and

Chinatown. In pop culture, and in demography, Downtown, Midtown, and Uptown are more important than East Side/West Side, leaving aside the West Side Story.

34. As someone who works with young adults, I would be remiss if I did not take a few moments to address how protecting incumbents can lead to disinterest among young people. Young people are increasingly disappointed with democracy, and one reason is the advanced age of members of Congress. We currently have the third oldest Congress ever, and all recent Congresses have been among the oldest.
35. The median age of individuals in the U.S. is 39 years old (which is my age), while the average age of House members is 58. When politicians choose their own district lines, districts become less representative, which ultimately puts democracy itself at risk.
36. The implications of how communities are treated should not be understated. Communities can find themselves divided and marginalized, and their voices diluted in the political arena. The impact of redistricting on communities is profound. It affects how well communities are represented and how effectively their needs are addressed. Ensuring that the process is fair and just is a daunting but necessary task.
37. But identifying communities of interest and determining how they should be situated continues to be a challenge. Many talented community groups are working on this, and academics have attempted to create more objective models of communities of interest, but progress is difficult, prone to manipulation, and expensive.
38. In recent years, technology has revolutionized the way we approach redistricting. Advanced mapping software and sophisticated data analysis tools have made it possible to identify communities of interest and make them mappable. These technological advances have also increased transparency, allowing the public to

engage more directly with the process. My hope is this technology will continue to bear fruit and play a more prominent role in the 2030 cycle.

39. Several things come to mind regarding communities: 1) they should be mappable, such that they are useful for mapmakers in defining district lines, 2) they should be recognizable, such that members of the community can verify their existence, 3) they should be defined ahead of any redistricting to avoid manipulation, and 4) they cannot be created solely to advance political objectives.

40. The court map, though not perfect, was very good. Here is why.

41. It is important for any democratic electoral system that the party that wins the most votes is very likely to win the most seats. That is, the district lines are responsive to voters. Using standard social science measures of partisan bias, the court map treated both parties equivalently. Independent observers recognized this in the court map.

42. The lines also created lots of competitive opportunities for both parties and brought a large stream of campaign funds from around the country into the state.

43. Both the Redistricting Commission and the Legislature seem to agree in the end that the court map was basically good. 94% of all voters were completely unaffected by the changes these bodies made. They affirmed what I already knew; no map is perfect, but the court map was justifiable and non-dilutive.

44. Many of the changes that were made raise some questions. For instance, what constitutional criteria was served by relocating Co-Op City into district 16? Why were several marginal changes made to districts 7, 8, 9, and 10? Why were these changes not proposed to the court in 2022? On the other hand, district 12 was among the most challenged districts in the court map for supposedly dividing communities of interest and its treatment of Jewish voters. However, no changes were made to district 12 in the 2024 map.

45. Whereas the court map divided 16 counties, the 2024 map divides 21. The 2024 map is less compact than the court map, and some of the changes seem to only be a result of improving incumbent chances of re-election.
46. One criticism the court received was the lack of public hearings. The map now in place was not the result of vigorous public debate. I am unaware of any hearing the Legislature held. In fact, several media outlets reported they were surprised by the Legislature's map. No report was issued justifying the changes, particularly those that seem to contradict legal constraints. This lack of transparency underscores the need for laws that mandate an open and transparent process shielded from manipulation.
47. Ultimately, redistricting will always involve choices and judgments about how to distribute political power among communities, parties, and various interests. We must leave this conference committed to reforming the process and rules both here in New York and everywhere.
48. Several potential reforms stand out. Whenever the public is asked to vote on eliminating partisan gerrymandering, there is an overwhelming, bipartisan desire to remove politics from redistricting.
49. Further legal reforms are necessary to address lingering issues of fairness and prevent partisan gerrymandering. However, laws are only useful when they are respected; they should be written clearly and allow judicial intervention when circumvented.
50. So, I am a strong proponent of direct language in state constitutions that constrain mapmakers. Criteria should be clear and non-manipulatable, should have a clearly defined ordering of importance. The New York Municipal Home Rule offers a compelling example of how such a law can be structured. Equality of population and protection of minority voting rights are the highest priorities.

51. It is my view that preserving political subdivisions is critical for constraining the most egregious gerrymanders. It should be the next highest ranked criteria given its objectivity. Political subdivisions, like city and counties, represent an example of a community of interest that is based on objective, mappable, and cognizable data. That political boundaries are fixed is both a virtue and a deterrent, to be sure. Relying on these objective boundaries limit the most extreme partisan tendencies, and any reform should include protections of political subdivisions. Deviations from this should be justified and based on broad agreements that communities are better served by these divisions. Importantly, smaller communities should receive more protection than larger subdivision. This is both practical and justifiable.
52. I also believe it is critical that plaintiffs have the ability to get litigation costs reimbursed when they win lawsuits. In some states, those who have had their rights trampled are required to self-fund litigation to protect those rights. This makes it far too easy for legislatures to suppress voters' rights.
53. There is a growing movement towards greater public participation in the redistricting process. Engaging citizens through public hearings, interactive mapping tools, and open data initiatives can help ensure that the process is more democratic and reflective of community needs. But these things need resources.
54. Crucially, the legal framework is central to developing a plan through an inclusive and transparent process. Establishing a better process before the 2030 census can help prevent costly litigation, encourage more public input, and lead to more representative maps.
55. Thank you for your attention and participation in this vital discussion. Together, we can shape a future where every voice is heard, and every community is represented. Enjoy the rest of the conference.