

Introduction

The bedrock of representative democracy in America is the electoral district. One of its earliest homes, New York remains an unusual challenge for districtors, given its size, racial and ethnic diversity, and geographic quirks. These could be subsumed by a single focus on only one principle of districting, but the democratic process will not admit such a monolith. Accordingly, broader principles incorporate the consideration of the human and physical geography of the state. In New York, as in many states, statutory and Constitutional principles are the limit against which the primary objective of partisan advantage strives, sometimes also incorporating districts friendly to individual incumbent representatives. As a normative matter, few voters would likely have their districts drawn to favor incumbents; those advantaged by a partisan plan might favor such an objective, but such an approach has many substantial drawbacks, such as the entrenchment of parties in local power and the effective disenfranchisement of others. Nonetheless, the drawing of districts by partisan officeholders results in the prioritization of parties and incumbents over other considerations. But it need not be so. Leaving aside the political means by which it might be implemented, an approach that ignores parties and incumbents can better prioritize the principles of respecting political subdivisions and drawing compact districts while likewise hewing to the requirements of the Voting Rights Act (VRA) and the Constitutional standard of equal population. The result is a “good government” plan, embodying the notion that while districting inherently involves trading off between various values of representative democracy, it can do so better when unencumbered by its employment as a mechanism to retain political power.

Principles and Trade-offs

In New York, as noted, a plan undertaken with the principles headlined by “good government” will differ markedly from one likely to be enacted by the legislature. I ignored the state’s political geography, except to the extent that it is reflected in its demographics. These I took into account in revising the numerous minority-opportunity districts based in New York City, which is where I began drawing from the base of the 2010 plan. I then worked from the east and west ends of the state, both of which did not entail obligations under the VRA, meeting at the isthmus-region of Westchester County. Along the way, I revised the districts to improve their compactness and limit splits of political subdivisions. The resulting districts are dramatically more compact than the previous ones or the current 2020 plan, as my primary limitations on compactness are physical geography and compliance with the VRA.

New York is losing a Congressional district, so most of its 2010 districts were underpopulated for the 2020 census. Accordingly, starting with these in order to retain their cores, I adjusted them to the updated population requirement for the 2020 census, as adjusted to allocate inmates in accordance with state law. In doing so I eliminated county splits, city/town splits, and reservation splits, prior to adjusting for equal population. When possible, I used the need to split subdivisions for population equality to join communities or landmarks otherwise split between districts. In equalizing, I attempted to limit the number of split voting districts. Each of these efforts involved trade-offs. At the largest scale, compliance with the VRA did mean drawing less-compact districts, particularly for District 6 (which remains an Asian opportunity district) and District 7 (which borders the Black-opportunity District 9). In complying with the VRA, which I discuss further below, I chose to draw multiple opportunity districts rather than only draw majority-minority districts. In part this reflects a judgment that in a setting with less dramatic racial polarization in voting, opportunity districts are both more

likely to perform and less likely to be successfully challenged. In part also this seemed to better match the demographic geography. The majority-minority districts might have required far more disruption to community boundaries and more compromise to the principle of compactness; or, more likely, simply diluted the voting power of minority constituents.

Process and Plan

Before beginning work on my eventual plan, I drew a plan from scratch without looking at the existing districts in order to see how I might want to allocate counties, particularly outside of New York City (where the counties are much larger than the districts, and in which, in any case, I correctly anticipated that VRA considerations would play a significant role in the districting process). Long Island was particularly convenient, with Suffolk County and Nassau County accounting for nearly the entirety of Districts 1 and 2 and Districts 3 and 4, respectively; and I could see that each of the larger cities upstate would present some challenges because of their misalignment with county lines. Their suburbs are even more likely to spill over into neighboring counties, which were delineated long before the cities reached their present sprawl. Similarly, I saw that multiple Indian reservations crossing county lines, presenting another decision point for my ultimate districting.

Given the physical geography, I felt it would best meet the state criteria to leave Westchester County as the meeting point of the eventual population discrepancies resulting from propagating through to update the 2010 districts. This area arguably has a relatively less-coherent independent identity than other parts of the state; but it also is the necessary breaking point of two separate parts of the state, unless I were to split Westchester County (a necessity based on its population) vertically, which would result in profoundly noncompact districts. I placed the 2010 districts up through the isthmus, aligned them to the county lines where it was possible to do so,

straightened out lines for better compactness, and brought district boundaries in line with major highways and inlets. In Brooklyn and Queens I accounted the minorities in opportunity districts, then adjusted them to improve alignment with county lines and make districts more compact, particularly District 10 and District 14, which awkwardly straddled Brooklyn and Manhattan, and Queens and the Bronx, respectively. District 10 fit entirely within Manhattan, and District 14 could much more compactly straddle the East River at Rikers Island than the Whitestone Bridge while remaining a Hispanic-majority district. District 15 moved north to meet the needs of population shift.

Having settled New York City, I placed the districts for the rest of the state, excepting the isthmus district, and undertook a similar process of using county lines to guide the creation of more compact districts. This had the benefit of enabling the joinder of Erie and Chautauqua Counties, uniting the Seneca Nation Cattaraugus Reservation in District 26, and Seneca and Cayuga Counties, collecting the communities and reservations of the Cayuga Nation around Cayuga Lake into District 22. There were tensions along the county lines, as well: Buffalo and Niagara Falls were clearly a coherent community spanning Erie and Niagara Counties, and each of Almond (Allegany and Steuben Counties) and Earlville (Madison and Chenango Counties) required deciding whether to draw district borders along county lines or so as to not split these. I chose to prioritize retaining the towns and communities intact over the counties, reasoning that while both of these would be valued by the state, community cohesion would be meaningful to the populations involved as well, for whom county lines are less meaningful boundaries.

I used the few unavoidable county splits as a starting point for equalizing population. Along each of these boundaries I found positions where I could slightly improve compactness, then started with voting districts before using individual census blocks to equalize. When I did

not have a pre-existing split county, and in a few cases even when I did, I prioritized other considerations over maintaining intact counties. I split Livingston County between Districts 22 and 26 to merge Letchworth State Park. I split Monroe County between Districts 22 and 24 rather than disrupt the community around Victor within District 24 with Rochester. I split Cayuga County between Districts 22 and 23 to merge Skaneateles Lake and its neighboring communities. I split Saratoga County between Districts 19 and 20 in order to keep the northern suburbs of Albany with it in District 19. When county splits were unavoidable, I kept cities and towns together and tried to keep larger communities together, such as in Ulster County, where I merged communities on the two sides of the Hudson River within District 18; and around Harriman State Park, which I mostly merged into District 17 around the adjacent city and town boundaries. In Westchester County, I similarly split between communities along the Hudson River and those farther away, in order to retain some cohesion in the respective districts.

Compliance

The guiding principle of redistricting is the US Constitution's obligation, as interpreted by the Supreme Court, that districts be of exactly equal size unless there's a very good reason. In practice, given the available technology, it is more expedient to draw a plan with districts of equal population than to offer failure to do so as an additional avenue of legal attack, regardless of the available rejoinder. In accordance with New York state law, my plan uses population adjusted to assign inmates to their last known address prior to incarceration. Upon that basis, each of the 26 districts is within 1 person of the calculated ideal district size of 776687; as the state's population is congruent to $-4 \pmod{26}$, I drew a net total of 4 more districts with a deviation of -1 than with a deviation of 1 in order to ensure this result.

The US Constitution has also been held, in *Shaw v. Reno* (1993) to require that race not be the “predominant” factor in the drawing of either a district or a plan as a whole. I evaluated race in assessing the 2010 plan and the state as a whole, and on that basis directly considered race in drawing Districts 5, 6, 8, 9, 13, 14, and 15. However, for none of these was race the predominant factor in how I drew the district. Furthermore, because the population of New York City better kept pace with the state’s loss of a congressional seat, and because New York City had fewer political subdivision splits to rectify, these districts better retain the cores of the previous districts. Accordingly, to the extent that these districts do nonetheless appear to be racial gerrymanders, that result is better attributed to the previous districts and my role is in adhering to the obligation under state law (see below) to retain the cores of existing districts.

Although it has been limited by the Supreme Court over the past decade in both scope and power, the VRA remains in effect with respect to its limitation on diluting the voting power of racial, ethnic, and language minorities. As mentioned above, New York is a quite different setting for the application of this legislation than its primary target of anti-Black discrimination in the South. While demographics certainly impact electoral outcomes here, New York City does not have as strong a history of racially-polarized voting, lowering the stringency with which districts will be subject to Section 2 under *Thornburg v. Gingles* (1986). As a practical matter, less racially-polarized voting also means that districts with a concentration short of a majority of the demographic group of interest will likely still be able to elect a candidate of choice. This is bolstered by the mix of demographic groups in the City, further mitigating the potential impact of racially-polarized voting.

Given these considerations, I chose to draw Districts 5, 8, and 9 as Black opportunity districts; District 6 as an Asian opportunity district; and 13, 14, and 15 as Hispanic opportunity

districts (with Districts 14 and 15 having a majority of adjusted population Hispanic). While the competing pressures of *Shaw* and the VRA make it difficult in a state with a sufficiently numerous minority population to entirely preclude the possibility of litigation, I am comfortable with this choice as defensible against attack from either angle. The demographics in each of these districts strongly favor election of candidates of choice. While this portion of the plan does have the least-compact districts, this was true in the 2010 plan from which I am in part attempting to retain district cores, and the physical geography presents a significant constraint on connecting Staten Island, Manhattan, and the south tail end of Queens to Brooklyn.

State law places a number of constraints on redistricting, some of which may be redundant with federal law or the Constitution. New York requires equal district population, which I have addressed above as a Constitutional rule. As noted there, unlike the federal government (which does not explicitly specify the basis for counting district population) the state provides for the adjustment of census population to allocate inmates to their last known free address. State law also echoes the VRA, more explicitly barring the intent or outcome of limitation to the voting rights, or opportunity to elect candidates of choice, of racial or language minorities. Additionally, districts must be contiguous and as compact as practicable, and the commission in drawing the districts must consider the maintenance of existing districts, political subdivisions, and communities of interest. Finally, plans must neither discourage competition nor have the purpose of favoring or disfavoring candidates or parties.

I believe that compliance with the VRA, as previously addressed, satisfies the New York requirements as well. My approach may even better fit the language of “opportunity” used in the relevant provision.

I confirmed that my districts are contiguous, with the technical exception of District 10, which includes the non-contiguous Liberty Island and Ellis Island enclaves. My districts are quite compact, and considerably more so than the more gerrymandered 2010 plan (although drawn by an esteemed independent expert at the behest of federal court, the plan retained in significant part the 2000 districts, which had been legislatively drawn) and current 2020 plans. As previously noted, my primary limitations on compactness were due to physical geography and compliance with the VRA. I did also limit county splits rather than draw more-compact districts, particularly in the cases of Districts 19/21 (Greene County) and Districts 17/18 (Putnam County).

As previously mentioned, I began my final plan with the 2010 districts. Although I made many changes to them to prioritize other principles, as a result I retained the cores of many districts, especially those around the larger upstate cities (Districts 19, 24, and 25) and in the geographical corners (Districts 1, 11, and 20). I ultimately split 20 of the 62 counties, several fewer than the number of districts, and close to the theoretical minimum for population equality. I split 6 municipalities: Fire Island, which would have been geographically unreasonable to retain; Smithtown, of which I split off the one corner on the other side of a highway; Hauppauge, Massapequa Park, and New Hyde Park, which was necessary for population equality as Long Island does not have unincorporated land between municipalities; and New York City, which of course is far too large to fit within a single district. As previously noted, I merged several Indian reservations, with the result that all 11 in the state are within single districts.

With respect to New York's political requirements, these are evidently in practice interpreted rather narrowly, as the rather aggressive 2020 plan passed muster. Even were that not the case, I certainly did not intend any particular political outcome, as I did not consider

candidates or parties at all in drawing the districts. It turns out that in doing so I created a surprisingly fair plan, scored by PlanScore with an efficiency gap of 0.5% R, less than the most recent performances of the 2010 plan (3.5% D and 4.3% R in the 2020 and 2016 Presidential election; and 12.2% D and 5.6% D in the 2018 and 2016 Senate elections, for a raw average of 4.25% D); and far less than the legislature's 2020 plan, which scores at 5.4% D.

Comparison

The 2010 plan, as noted previously, was created for different reasons than mine. New York has also experienced significant population shifts, particularly upstate, resulting in the loss of a congressional district and accounting for some of the differences between districts. The others result from different priorities and constraints. The 2010 plan was created to limit change from the 2000 plan in light of the fact that it was court-ordered, although New York had lost 2 congressional seats following the 2010 census. I had the freedom to “consider,” in the words of the relevant New York constitutional provision, the core constituencies of existing districts (and I certainly did so), but I was not obligated to any particular reimplementations of them, and in many cases strayed substantially from them, primarily in the service of better compactness and fewer political subdivision splits. As a result, the biggest differences are greater compactness in both upstate and New York City districts, somewhat smoother borders, particularly for example a consolidation between Districts 8 and 9 to these ends. The plans align in a sizable handful of places due to following the same county lines.

The 2020 plan bears many of the hallmarks of an aggressive gerrymander, featuring long districts collecting rural areas alongside more compact districts counterweighting carefully selected portions of them with more urban areas. New York City itself has become even more tangled, particularly in Brooklyn and the Bronx. Beauty is in the eye of the beholder; but it is

hard to make a case for the merits of such a plan outside its partisan political aims. It is not pretty, and it is certainly not conducive to the accessibility of the political process. It is, however, highly effective, as previously noted. The 2020 plan aligns with mine in a few places where they follow the same county lines.

Conclusion

This districting exercise was both a reminder of how important districting is and how difficult it is to do well. My plan is far from perfect, but it also reflects my own priorities and limited knowledge. More urgently, in comparing my plan to the 2010 and 2020 plans, it is quite frustrating to see plans that are so limited by the constraints of the political process that (indirectly and directly, respectively) produced them. Their drafters are both more knowledgeable and more skilled than I, but lack my freedom to ask the map how it can best fit the criteria and serve constituents. I'm not sure how to get this to happen – in our system the rules of power are made by those who have it, limiting any shifts that might mitigate its concentration and perpetuation. But it is still worth seeing what could be, and doing so develops the skills and understanding needed to see what is happening and work to make it better.