UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK	
ANNE POPE, JANIS GONZALEZ, and WANDA WILLINGHAM, Plaintiffs,	AFFIDAVIT OF JOHN E. MERRILL IN OPPOSITION TO
VS.	PLAINTIFFS' MOTION
COUNTY OF ALBANY and the ALBANY COUNTY BOARD OF ELECTIONS,	FOR PRELIMINARY INJUNCTION
Defendants.	Civil Action #11-CV-736
	LEK/DRH
STATE OF NEW YORK)	
COUNTY OF ALBANY)	

John E. Merrill, being duly sworn, deposes, and says:

- I am the Redistricting and Mapping Coordinator for the Albany County Legislature. I submit this affidavit in opposition to plaintiffs' motion for a preliminary injunction.
- 2. In a Resolution dated March 14, 2011, I was retained by the Albany County

 Legislature to assist the Redistricting Commission in preparing a map that would establish new

 districts in light of the 2010 Census.
- 3. On March 25, 2011, I obtained the 2010 Census redistricting data [P.L. 94-171] for New York State and began extracting the pertinent Albany County information for use in ESRI mapping program with DISTRICTSolv as an add-on.

4. Attached as Exhibit A is 2010 Census information for the County of Albany and City of Albany. The 2010 census for Albany County reported:

	Population	Percentage
Total Population	304, 204	100.00%
Population by Race and Ethnicity		
Non Hispanic or Latino -White	231,152	75.99%
Non Hispanic or Latino - Black or African American	36,396	11.96%
Non Hispanic or Latino - American Indian & Alaskan Native	453	0.15%
Non Hispanic or Latino - Asian	14,500	4.77%
Non Hispanic or Latino - Hawaiian and Pacific Islander	88	0.03%
Non Hispanic or Latino - Some other Race	569	0.19%
Non Hispanic or Latino - Two or More Races	6,129	2.01%
Hispanic or Latino	14,917	4.90%
TOTALS	304,204	100.00%
Population by Ethnicity Alone		
Hispanic of Latino	14,917	4.90%
Non Hispanic or Latino	289,287	95.10%
TOTALS	304,204	100.00%
Total Population 18 years or older	243,573	80.07%
Non Hispanic or Latino –White	192,573	63.23%
Non Hispanic or Latino - Black or African American	26,196	8.61%
Non Hispanic or Latino - American Indian & Alaskan Native	375	0.12%
Non Hispanic or Latino - Asian	10,980	3.61%
Non Hispanic or Latino - Hawaiian and Pacific Islander	71	0.02%
Non Hispanic or Latino - Some other Race	341	0.11%
Non Hispanic or Latino - Two or More Races	3,239	1.06%
Hispanic or Latino	10.024	3.30%
TOTALS	243,573	80.07%

See Exh. A.

- 5. In preparing the redistricting plan, I also followed the principles outlined in the National Conference of State Legislatures' Redistricting Law 2010, including:
 - a. Compactness
 - b. Contiguity
 - c. Preservation of counties and other political subdivisions
 - d. Preservation of communities of interest
 - e. Preservation of cores of prior districts
 - f. Protection of incumbents and
 - g. Compliance with Section 2 of the Voting Rights Act.

Attached as Exhibit B are the Redistricting Guidelines.

- 6. The Redistricting Commission maintained a website at http://www.albanycounty.com/legislature/redistricting.asp, at which it posted the City of Albany's Neighborhood Association Map, current districting map, 2010 Census figures, current county legislative district population comparison, proposed redistricting maps, and block equivalency tables, and metes and bounds description for the final redistricting maps. Attached as Exhibit C is the City of Albany's Neighborhood Association Map and Current County Population Comparison.
- 7. Attached as Exhibit D is my redistricting progress report that summarizes the actions that I took in preparing the redistricting plan.

8. Attached as Exhibit E is the final plan which I prepared in accordance with the materials identified herein. On May 19, 2011, the Redistricting Commission adopted the final

plan and forwarded to the Albany County Legislature for its consideration.

9. On May 23, 2011, the Albany County Legislature adopted Local Law C which

enacted the final redistricting plan.

10. I have reviewed the redistricting plan offered by the Arbor Hill Environmental

Justice and found that, in contrast to Local Law C, the effort to create a fifth minority-majority

legislative district violates well-established redistricting principles, including compactness. As

established by attached Exhibit F, plaintiffs' plan would also break up neighborhood

associations, and also combine distant and distinct communities, and not preserve communities

of interest.

	/s/ John E. Merrill
	John E. Merrill
Sworn to before me this 29 TH day of July, 2011	
/s/ Peter G. Barber Notary Public, State of New York	

Albany County 2010 Census Results

Total Population by Race and Ethnicity Population by Race and Ethnicity	Map Abbreviation	Category	Population	County Percentage
NH_WHITE Not Hispanic or Latino - White 231,152 75,99% NH_BLACK Not Hispanic or Latino - Black or African American 36,396 11.96% NH_NAM Not Hispanic or Latino - American Indian & Alaskan Native 453 0.15% NH_ASIAN Not Hispanic or Latino - Asian 14,500 4.77% NH_HPI Not Hispanic or Latino - Hawaiian and Pacific Islander 88 0.03% NH_SOR Not Hispanic or Latino - Some other Race 569 0.19% NH_ZMR Not Hispanic or Latino - Two or More Races 6,129 2.01% POP_HL Hispanic or Latino 14,917 4.90% POP_HB Hispanic or Latino 14,917 4.90% POP_NHL Hispanic or Latino 14,917 4.90% POP_NHL Not Hispanic or Latino 14,917 4.90% POP_NHL Not Hispanic or Latino 14,917 4.90% POP_NHL Not Hispanic or Latino 192,347 63.23% NH18_WH Not Hispanic or Latino - White 18 Years or Older 192,347 63.23% NH18_NAM Not His	TOT_POP	Total Population	304,204	100.00%
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NH18_2MR Not Hispanic or Latino - Two or More Races 18 Years or Older 3,239 1.06% HL_18 Hispanic or Latino - 18 Years or Older 10,024 3.30%	NH18_HPI	Not Hispanic or Latino - Hawaiian and Pacific Islander 18 Years or Older	71	0.02%
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TOTALS 243,573 80.07%	HL_18	Hispanic or Latino - 18 Years or Older	10,024	3.30%
		тотл		80.07%

City of Albany 2010 Census Results

Map Abbreviation	Category	Population	City Percentage
TOT_18	Total Population 18 Years or Older	80,300	100.00%
NH18_WH	Not Hispanic or Latino - White 18 Years or Older	48,231	60.06%
NH18_BLK	Not Hispanic or Latino - Black or African American 18 Years or Older	20,215	25.17%
NH18_NAM	Not Hispanic or Latino - American Indian & Alaskan Native 18 Years or Older	164	0.20%
NH18_ASN	Not Hispanic or Latino - Asian 18 Years or Older	4,000	4.98%
NH18_HPI	Not Hispanic or Latino - Hawaiian and Pacific Islander 18 Years or Older	41	0.05%
NH18_SOR	Not Hispanic or Latino - Some other Race 18 Years or Older	207	0.26%
NH18_2MR	Not Hispanic or Latino - Two or More Races 18 Years or Older	1,644	2.05%
HL_18	Hispanic or Latino - 18 Years or Older	5,798	7.22%
	TOTALS	80.300	100.00%

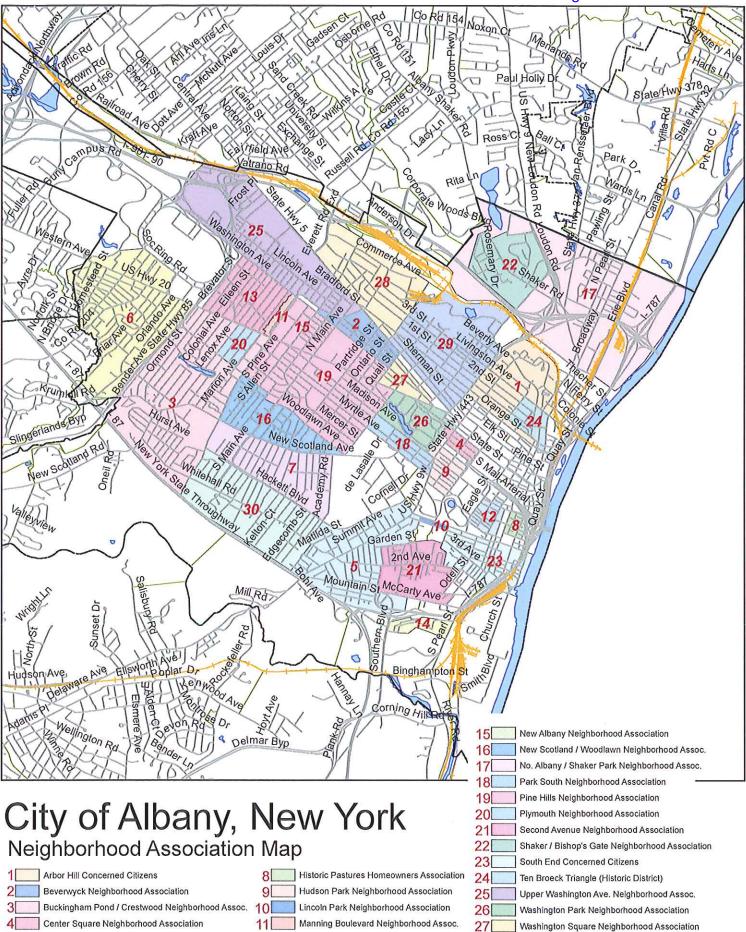
2011 Redistricting of Albany County, New York

The Legislature of the County of Albany, NY is required by law to prepare alternatives for redistricting the thirty nine County Election Districts, at least once in every ten (10) years following the release of the Federal Census Statistics.

The Legislature shall form districts that are, as nearly as practicable, one thirty-ninth of the total population of the County, or whatever proportion they determine best, should a reduction in the legislative representation be desired. Furthermore, the redistricting plan shall provide fair and effective representation for all citizens of the County, including racial, ethnic, and language minorities, and be in conformance with the requirements of the United States Constitution and Federal statutes. To the extent it is practical to do so, districts shall: preserve identifiable communities of interest; be geographically compact (populous contiguous territory shall not be bypassed to reach distant populous areas); be composed of whole census units as developed by the United States Bureau of the Census; be composed of contiguous territory with reasonable access between population centers in the district, and not be drawn for the sole purpose of advantaging or protecting incumbents.

The National Conference of State Legislatures, in their review of Redistricting Law 2010 states that, since 1993, seven policies or goals have been judicially recognized as "traditional districting principles:"

- 1. Compactness
- 2. Contiguity
- 3. Preservation of counties and other political subdivisions
- 4. Preservation of communities of interest
- 5. Preservation of cores of prior districts
- 6. Protection of incumbents and
- 7. Compliance with Section 2 of the Voting Rights Act. (Section 2 of the Voting Rights Act prohibits any state or political subdivision from imposing any voting qualification, standard, practice or procedure that results in the denial or abridgment of any U.S. citizen's right to vote on account of race, color or status as a member of a language minority group.)



Mansion Neighborhood Association

Melrose Neighborhood Association

Mt. Hope Townhouse Association

28

30

West End Neighborhood Association

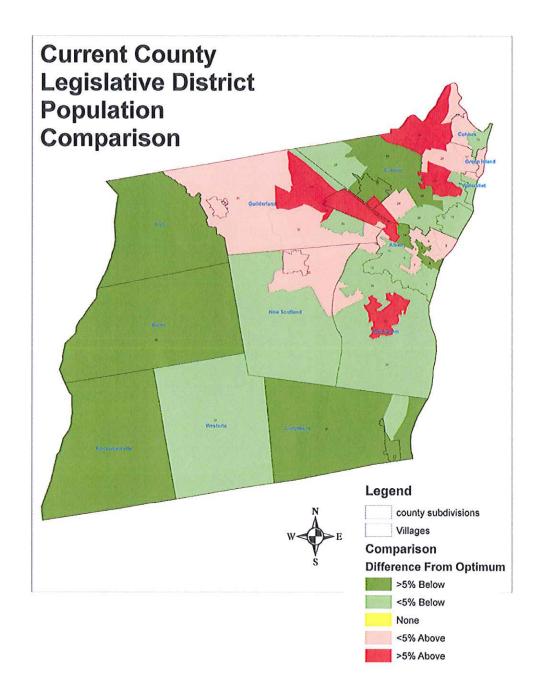
West Hill Neighborhood Association

Whitehall Neighborhood Association

Delaware Area Neighborhood Association

Eagle Hill Neighborhood Association

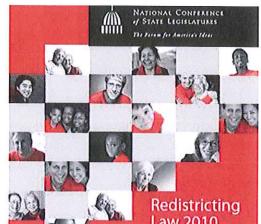
Helderberg Neighborhood Association



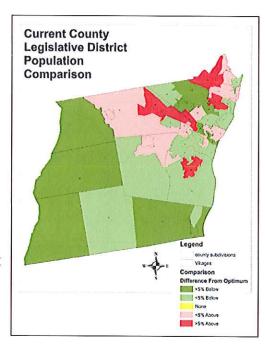
John Merrill

Notes:

- 1. Jan. 31, 2011: Met with Dan McCoy and his assistant, Tom Scarff, about coming back to the county to work with the Legislature on redistricting. I agreed to do so, and told them my most important needs would be a districting add-on (DISTRICTSolv) to the ESRI mapping program already in use by the Planning Department along with an office space removed from the Legislature but close to the mapping resources and reproduction facilities the job demanded. They agreed that that was possible, and I could set up shop in my old office down the hall from their office in the Planning Department.
- Received a copy (which I had requested) of <u>Redistricting</u> <u>Law 2010</u> published by the National Conference of State <u>Legislatures</u> provided by the County <u>Legislature's</u> office. Read it, and made copious notes.
- 3. Started gathering all relevant GIS data to use as a basis for mapping the new districts based upon the 2010 Census results.
- 4. Received a copy of the districting extension for ERSI ArcView (DISTRICTSolv) around the 21st or 22nd of February and familiarized myself with it's capabilities.

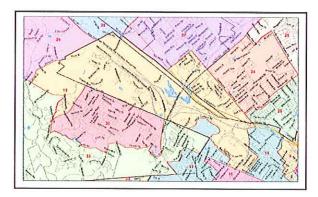


- 5. Feb. 24, 2011: Met with the newly appointed Redistricting Commission (minus Norma Chapman and Thomas Cotrofeld) and they agreed to hire me pending a presentation to a joint caucus of the Legislature and the public. Their expressed hope was to present an acceptable plan to be approved in time to meet the petition deadline of June 6th.
- 6. March 3, 2011: Gave my presentation to the joint caucus of the Legislature and the public. End result...I was chosen to prepare the redistricting proposals for the Legislature, and was approved by the Legislature on March 14, 2011.
- 7. I began working on March 21st.
- 8. 2010 Census Redistricting Data [P.L. 94-171] Summary Files were released to NYS on March 24th. On the 25th I started working with Buddy McGuire from Information Services to extract the information we would need for the redistricting process.
- 9. By the end of the next week, April 1st, I was able to input the Census data into my mapping program and produce a map of the population load for the current legislative districts in order to determine where changes would be necessary in order to ensure equal representation.

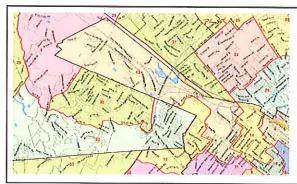


John Merrill

- 10. Having heard from the Redistricting Commission that public sentiment they were hearing was stressing the need to have Legislative Election Districts (LEDs) conform as much as possible to existing municipal bounds, I ran my districting program for the first time to produce compact districts of ±5% population deviation from the optimum load of 7,800, but I was unable to show Chairman Morse the results before he left for vacation on the 14th of April. The results were nothing anyone would desire. Municipal boundaries were crossed as much as before, and the fact that Mr. Infante would not be running again was brought to my attention. This exercise did, however, provide me with a reference point for what might be possible.
- 11. I further refined my first draft to maintain the core ideas of compactness and population limits. I tried to create fewer splits of municipal boundaries as has been the expressed desire of some of the people attending the public hearings, and reduced the number of LEDs in the City of Albany by one.
- 12. At the suggestion of Chairman Morse, I asked Tom Marcelle, the Minority Counsel, to meet with me and explain the problems encountered in the last redistricting, so that we might not repeat the same mistakes which lead to the many challenges of those efforts. Our meeting was very productive and he agreed to provide me with a copy of the court's decision in the last redistricting law suit. A reading of Judge Homer's decision on the challenge to the County's plan in the last redistricting effort provided me with very helpful insights on the court's definition of what constitutes a minority. (Not Hispanic or Latino Black and African Americans, Not Hispanic or Latino people of Two or More Races, and those who identified solely as Hispanic or Latino.)
- 13. I shifted the population load of district 1 (Infante's district) in a counter-clockwise direction, through the City of Albany and into the towns of Colonie and Guilderland where there has been an increase of population over the last decade, thereby making one less district which reached outside the City of Albany to justify it's population load.
- 14. In the process, I pulled district 13 out of Guilderland and into the City of Albany, and was also able to eliminate it's intrusion into the Town of Colonie. District 6 was pulled back into the City of Albany from it's boundary with the Hudson River to more adequately address it's representation of the Washington Park and Center Square neighborhood areas. The 12th district was pulled out of Guilderland, but still extends into the Town of Bethlehem.



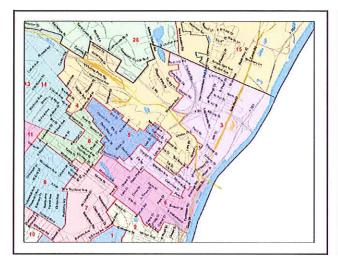
Current District 13



Proposed District 13

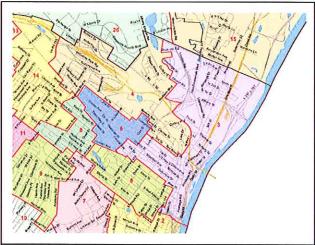
John Merrill

15. I re-arranged the minority/majority districts in the City of Albany to maintain the balance required by the court and to make them more compact and contiguous. This entailed extending district 2 to the southern border of the City of Albany down to the Normanskill and refining the division between districts 4 and 3 to avoid the appearance of gerrymandering which exists in the current districts. The resulting districts (numbers 2, 3, 4, and 5) are more compact and better conform to concentrations of the county's minority population. Attempts were made to create a fifth minority/majority district but the dispersion of minority representation throughout the rest of the county prohibited this.

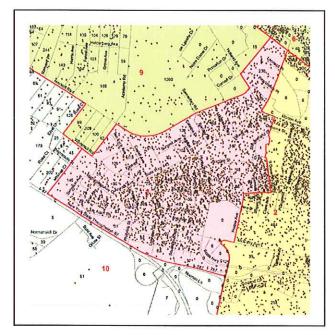


Current Districts 3, 4, and 6

The most likely place to make a new minority/ majority district seemed to be around the district 7 area along 2nd Avenue. Although the density display of Not Hispanic Black and African American population suggested a possibility, the results were against it. This example (at right) showed only a 47.59% minority representation and could not be increased without extreme gerrymandering. I can't guarantee that someone won't come up with a different solution, but I haven't seen it yet and am open to suggestions.



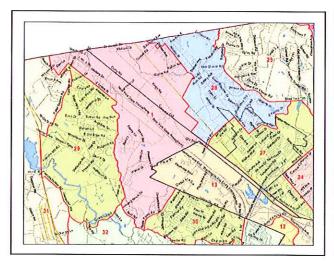
Proposed Districts 3, 4, and 6

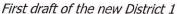


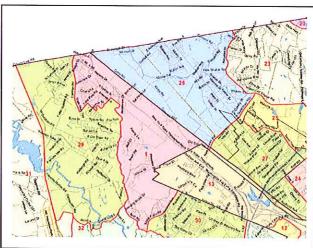
Attempt to construct a 5th minority/majority district. Density of Not Hispanic Black and African American population shown.

John Merrill

- 16. I expanded districts 37 and 39 which were under-represented in the 2010 Census.
- 17. This process (steps 13 through 16) created an unrepresented district which ran to the Schenectady County line covering the Community of Interest (COI) of the Pine Bush Conservation Area and a good deal of the new-growth area of the County. Unfortunately, this unrepresented district (shown on maps as district 1) crossed the town line between Colonie and Guilderland, a situation which the Commission asked me to look into changing if at all possible. However, this also brought about the surprise result of district 36 being spot-on at a total population of 7,800.
- 18. At his invite, I joined Tom Scarff, Thomas Cotrofeld and Christine Benedict at the Gateway Diner for a discussion of my efforts on Saturday morning (the 16th of April.) Lucille McKnight (newly appointed Commissioner) joined us, and Tom Scarff asked me to detail my efforts as of then. I presented them with the details explained above, and left them with printouts of the population results of the first draft proposal which I had arrived at. No maps were presented.
- 19. In order to rectify the situation of the new district 1 crossing the border between Colonie and Guilderland, I adjusted the population concentrations of districts in the Town of Colonie to move representation of the new-growth Pine Bush populations entirely into the Town of Guilderland. Unfortunately, this resulted in the expansion of district 31 into the Town of Knox and created a situation in which two incumbent legislators were in the same district (Mr. Gordon and Mr. Aylward.) This did, however, create new boundaries for the 39th which would solely encompass the three hill towns of Berne, Rensselaerville, and Westerlo. The 38th district would consist of most of rural New Scotland and a portion of a similarly populated and rural area of Bethlehem.



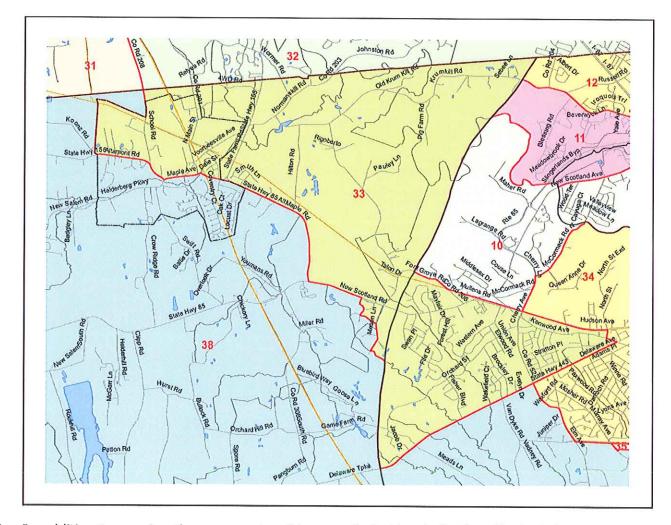




Proposed new configuration of Districts 1 and 28

John Merrill

20. The 33rd district, although rather oddly shaped, still represents a district with many common interests, from pressure by developers attempting to expand suburban development into the rural/agricultural oriented areas of the county, to the intrusion/introduction of "big-box" stores into the area.



- 21. In addition to running these scenarios, I have collected local election district information for each municipality in order to help the County Board of Elections with their task of rearranging those voting districts after the county LEDs are delineated. These election districts often were constructed by splitting property lines, and following boundaries not consistent with Census block construction...a practice easily apparent in the Cities of Cohoes and Albany. With the help of local municipal clerks and ward leaders, I am fairly confident of their accuracy.
- 22. By May 4th, I was given the Commission's go-ahead to produced the materials needed to present their plan to the press at their Friday meeting.
- 23. On May 5th, as I was getting materials ready for the next day's Redistricting Commission meeting, I was asked to join Tom Scarff in his office where Wanda Willingham was raising a big stink about not being in her own district. It turned out that the major concern for both of them was the fact that Mr. Morse had asked me to re-number the districts to make their order

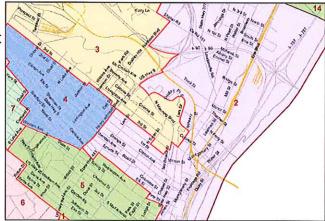
John Merrill

flow logically around the county, but neither one of them had been informed of this fact.

Ms Willingham also complained bitterly about the shape of her district and the unfairness of its

coverage crossing too many neighborhoods and ward lines. She was vehement about the fact that her proposed district was on the west side of Henry John Boulevard and clearly in the West Hill Neighborhood Association district. She said she would not accept that. Tom called Shawn who relayed to me that if the minority representation and the district population could be maintained, I should try to make Wanda happy.

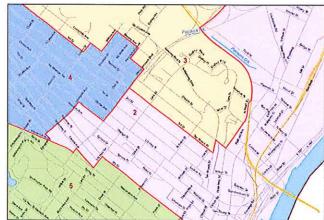
I did so, and worked out the new Block
Equivalency Report and new maps dated May
5th to show the change. I e-mailed the new
materials to the commission members, the mi



What Wanda wanted ...

materials to the commission members, the minority counsel, and Tom Scarff that evening around 7 PM.

- 24. Friday the 6th of May I was asked by Chairman Morse to accompany him to the Commission meeting on the 12th floor. Upon arrival, I discovered that Mr. Scarff was handing out maps dated May 4th which did not show the changes of the day before. I helped replace the necessary district maps and the meeting commenced.
 - After the meeting adjourned, Ms Willingham followed me to my office wanting to confirm the fact that the line she insisted on having redrawn was the actual Neighborhood Association line.
- 25. I spent the greater part of Saturday the 7th and Sunday the 8th writing the Metes & Bounds descriptions at my home office and sent them out to the Majority and Minority counsel around 8:30 PM on Sunday.
- 26. Monday morning I was informed that the altered line was done less as a matter of maintaining the cohesiveness of a Community of Interest, but more as a matter of self-interest, and the Commission wanted the district lines restored to what they had agreed upon back on May 4th. I changed to maps back to that date, re-ran the Equivalency Report, edited the Metes and Bounds Report, printed out the new district maps and 4 whole maps for the county for use in that evenings meeting of the Legislature...all materials dated May 9, 2011. All materials were shipped down to General Services for duplication and binding.



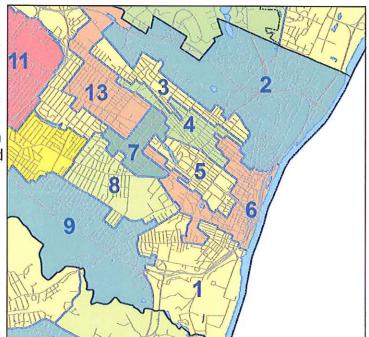
What Wanda got...

John Merrill

27. May 9th public hearing was well attended with (according to my notes) 16 people commenting. Noelle Kinsch (sp?) protested that she had been boxed out of running in the new 6th district; Herb Reilly made a case for not splitting Voorheesville; Aaron Mair said we could have made 6 minority-majority districts and called the plan malfeasance and wants a lower minority proportion than he had said was necessary in 2004; Hill-Towners eloquently explained their special circumstances and asked not to be split up.

Aaron's plan, which I recreated from images on his web site, shows 5 minority-majority districts which appear to be anything but compact and contiguous. The 6th LED includes parts of 10 separate neighborhood association districts. His statistics for minority representation in each district are less than what he insisted on in his challenge in 2004.

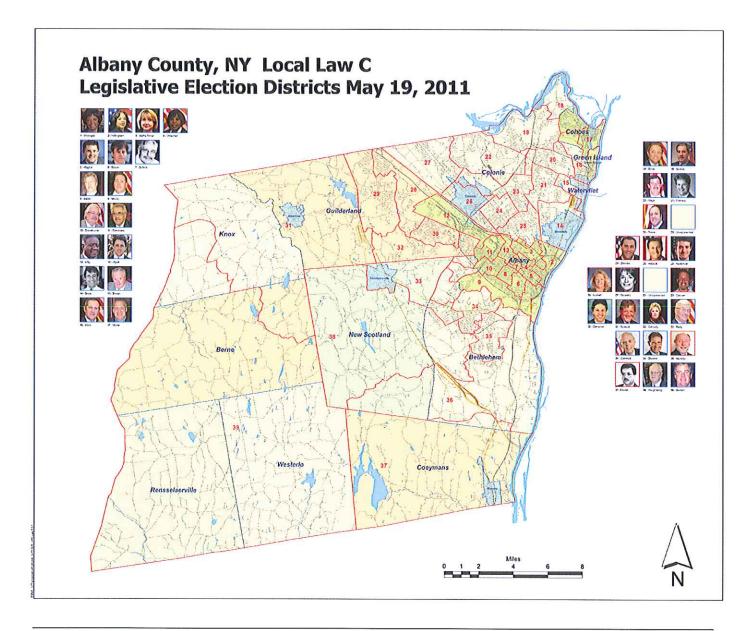
On May 24th, Aaron sent me the block equivalency file for his entire county plan which, incidentally, entirely removed the Town of Knox from its hill-town association with Berne, Rensselaerville, and Westerlo.



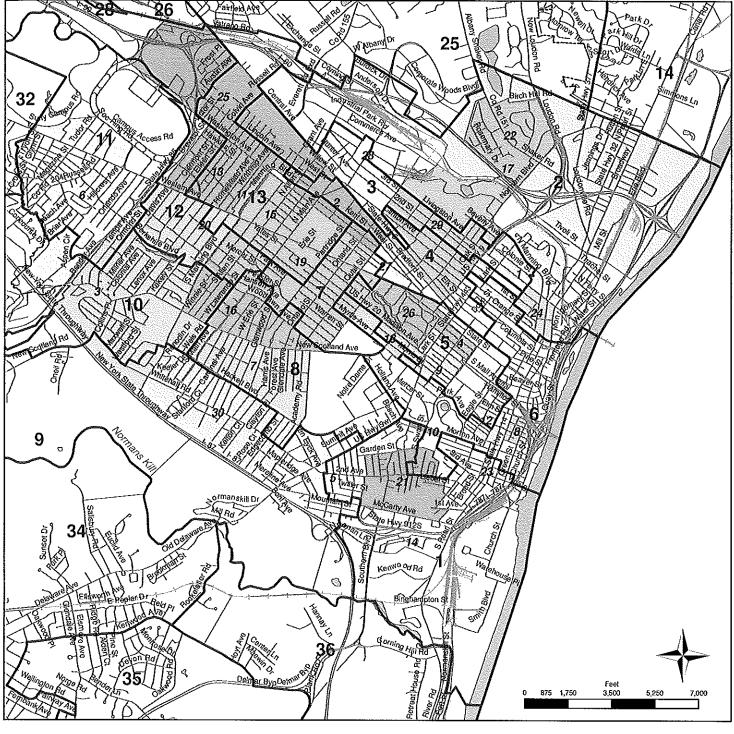
- 28. As a response to the May 9th hearing, the Commission asked me to try restoring the Detail from Aaron Mair's plan of minority-majority districts. Village of Voorheesville to be included entirely in one legislative election district. They also wanted me to restore Ms. Kinsch to the district she had been in (and where she had previously announced her intention to run for election) in order to avoid a situation where she could claim that the Legislature was protecting their incumbent.
- 29. Thursday the 12th of May I was contacted by Rachel Bledi from the Board of Elections about helping them with mapping the new municipal voting districts. I said I would help if I could after the Legislative Districts were drawn.
- 30. I spent the weekend of May 21st and 22nd writing metes and bounds descriptions for all the districts and alternative descriptions for the 4 or 5 which I felt might be changed during the next week.
- 31. At the hearing on the 19th of May, the Commission approved the plans as drawn at that point, and voted to pass them on to the Legislature for their approval.
- 32. On May 23rd, the Legislature met to hear comments on the Commission's plan and vote on whether to accept it or not. Final vote: 22 in favor, 14 against, 3 abstentions (or absent, I forget and my notes were unclear.) The plan was forwarded to the County Executive for his consideration.

John Merrill

- 33. May 24th: met with the Board of Elections to discuss their needs and assess what help I could be to them.
- 34. Mr. Breslin held his public hearing on the redistricting plan on May 31st. 21 people commented. He approved the lines as drawn a few days later.
- 35. On June 1st, I met with Matt and Rachel at the Board of Elections, and discussed their data bases with Jason. After several attempts to plot the locations of registered voters and/or people identified as 18 or older by the Census, it was decided that I should just try adjusting the local ED's in each municipality to fit within the new LED's in Local Law C. The Board of Elections would then do the final maps, but, in the mean time, the politicians would have something to go on for their petitioning. I finished the final municipality ED adjustments on June 8th, and left for vacation on the 9th.



AHEJ plan overlaid on Neighborhood Associations map



	AHEJ Districts	10	Lincoln Park Neighborhood Association
Neig	hborhood Associations		Manning Boulevard Neighborhood Assoc.
1	Arbor Hill Concerned Citizens	12	Mansion Neighborhood Association
2	Beverwyck Neighborhood Association	13	Metrose Neighborhood Association
3	Buckingham Pond / Crestwood Neighborhood Assoc.	14	Mt. Hope Townhouse Association
4	Center Square Neighborhood Association	15	New Albany Neighborhood Association
5	Delaware Area Neighborhood Association	16	New Scotland / Woodlawn Neighborhood Assoc.
6	Eagle Hill Neighborhood Association	17	No. Albany / Shaker Park Neighborhood Assoc.
7	Helderberg Neighborhood Association	18	Park South Neighborhood Association
8	Historic Pastures Homeowners Association	19	Pine Hills Neighborhood Association
9	Hudson Park Neighborhood Association	20	Plymouth Neighborhood Association

21	Second Avenue Neighborhood Association
22	Shaker / Bishop's Gate Neighborhood Assoc.
23	South End Concerned Citizens
24	Ten Broeck Triangle (Historic District)
25	Upper Washington Ave. Neighborhood Assoc.
26	Washington Park Neighborhood Association
27	Washington Square Neighborhood Assoc.
28	West End Neighborhood Association
29	West Hill Neighborhood Association
30	Whitehall Neighborhood Association