

D E B A T E

before

NEW JERSEY STATE SENATE

on

SENATE BILL NO. 10

(Establishing Congressional Districts for the State of New Jersey)

Held:

Monday, January 23, 1984

Senate Session

Senate Chambers

State House

Trenton, New Jersey

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SECRETARY OF THE SENATE: Senate Bill No. 10, sponsored by Senator Lynch, and that creating districts for the election of members of the House of Representatives of the United States of America.

SENATE PRESIDENT CARMEN ORECHIO: The chair recognizes the Chairman of the powerful Judiciary Committee, Senator John Lynch.

SENATOR JOHN LYNCH: Thank you, Mr. President. S-10 is the Congressional Redistricting Bill, which is in the exact form that was passed by the two hundreth session of the Legislature and vetoed by the Governor.

SENATOR ORECHIO: Senator Lynch-- Can we have some quiet, please?

SENATOR LYNCH: I submit to this body that this bill is best suited to satisfy the constitutional mandates as set forth by our Supreme Court, in that it has exactitude of population equality, with the main deviation being less than zero point zero, zero.

It protects minority voting rights, preserving the majority of the fifty-five percent in the Tenth District. It is most sensitive to the dislocation of constituencies, with dislocation of voters being less than ten percent. It is sensitive to incumbency, which is one of the areas of sensitivity outlined by our Supreme Court. And, it is does not fit any of the descriptions placed upon it by some of the objectors, including the Administration and several people who have submitted plans to the Legislature.

All of the other plans that have been submitted, satisfy, to a much lesser degree, the constitutional mandate; and, in fact, I don't believe they do satisfy it, in that they are not sensitive to incumbency as they seek to cause the defeat of senior members of our Congressional Delegation that are so important to the people of the State of New Jersey.

They do not seek and do not preserve the minority voting rights in minority voting districts. They are not sensitive at all to dislocation.

When it comes to the issue of fairness -- political fairness -- which has been specified by several of the Justices of the Supreme Court as being significant, I again point out to this body that when

one looks at the voting history in these fourteen districts, you will find that the election of 1980 carried eleven of those fourteen districts Republican, that the Republican candidate for Governor -- our Governor now -- in 1981 carried eleven of those fourteen districts. And, the Republican candidate for the U.S. Senate, in 1982, carried six of those districts. So, twenty-five out of the forty-two districts totaled in those three elections were carried by the Republican candidate. I think, clearly, it satisfies the political fairness criteria.

There have been criticisms of the Fifth District configuration. And, I must point out to you that in structuring compactness, it is extremely difficult to do when you have seventy-five percent of the voting population in approximately twenty-five percent of the State. But, in that Fifth District, we had a district that basically followed the same lines for about one-half century. And, I think the same thing holds true in the Mercer/Burlington district and the shore-front district of Monmouth and Ocean Counties.

So, I think that of all the bills that have been submitted to this Legislature, this best satisfies the criteria set forth by our Supreme Court in meeting the constitutional test, and I move the bill.

SENATOR ORECHIO: Just a minute, Senator Hagedorn, there are no press conferences permitted. That policy will continue from the past. If that policy isn't adhered to -- you know what the rest is.

Okay, Senator Hagedorn.

SENATOR GARRETT W. HAGEDORN: Mr. President, members of the Senate, Senator Lynch has indicated that the bill that is before us today had the possible -- the lowest possible deviation. I can't agree with that. I have introduced a bill today that will give us even a lower population deviation than the present bill that is before us.

In addition, the districts that are encompassed in the bill that I have submitted, I think make more sense. They are compact, they are contiguous. The towns in these districts would have a common community interest, unlike the bill that you have before us.

The bill that is before us has bazaarly-shaped districts, such as fish hooks, which was one of the criticisms of a previous

bill. That isn't the case in the bill I have submitted. The counties are not fragmented beyond recognition, as we have experienced. And, a representative would not have to travel for hours on time to get from one end of this district to the other.

So, I am asking that the members of this Senate reject this bill until you have an opportunity to consider the bill that I have submitted today.

SENATOR ORECHIO: Senator DiFrancesco.

SENATOR DONALD T. DiFRANCESCO: Thank you, Mr. President. I know it seems like we have been through this before, and we have been, very recently, but I feel we must communicate the same arguments we had back in -- I suppose December is when this came up once before, and the bill was vetoed by the Governor and reintroduced by Senator Lynch.

Of course, this is all resulting from the passage into law -- signed by Brendan Byrne into law -- of a similar bill, a very similar bill back, I guess, about two years ago. And, at that time we called it partisan gerrymandering, and things have not changed at all.

The Supreme Court concurred with the lower court and threw out this map that exists today. So, we are working with an unconstitutional map, and what we submit in this Legislature, and pass, could be vetoed by the Governor and then resubmit the same bill, but it is the same old unconstitutional map.

Now, if this Legislature wants people to think that you want to have a court decide on what your plan should be, then certainly you should vote for this bill, because certainly the court will draw its own map.

On the other hand, if this Legislature perhaps could wake up and decide that they should take this congressional redistricting seriously enough to perhaps reach a position where a court and a bipartisan legislature could agree, then we should reject this map.

This map is unconstitutional. Justice Stevenson, in his concurring opinion, pointed out that it is just not population deviation that counts, but partisan gerrymandering means something today, and that they ought to take a look at partisan gerrymandering. And, that's what this map represents.

I think we ought to start talking about the concept of a bipartisan commission to deal with these matters, if the Legislature is going to deal with these matters, as we do in our own redistricting, where we have five Republican members and five Democratic members. At least we should take a step towards looking at determining, in a bipartisan fashion, what these districts should be, being sensitive to all the factors that John Lynch referred to, particularly incumbency and population deviation. We ought to do all these things. But, we continue to ignore them; thus, we have this map which certainly, I don't believe the minority can support, and obviously the Governor can't support it.

We are going to throw this into the lap of the courts, and the courts will then again say, "Well, the Legislature couldn't agree again on something, and we are going to have to right the wrong that they have created."

Let's take a look at the map. And, I agree, Senator Hagedorn, that there are other maps that have been submitted that have better population deviation than this map. So, if we are talking about that, I think Senator Lynch was wrong. I think there are other maps that have been submitted, not only by Republicans, but by others, that are sensitive to incumbency, just as sensitive as any map that is before you. And, I think there are other maps that preserve the minority rights of our people -- of minority voting groups.

With respect to dislocation, if I can just dwell on that for a moment, certainly this map perhaps does not dislocate a lot of people from what is the unconstitutional map, because you did the dislocating two years ago when you put people in Bergen County with people in Mercer County.

So, we take an unconstitutional map and say, "This is our new map with a few variations, and certainly we are not going to dislocate people." Well, that is not what the court was after.

Let me show you District Five, which Senator Lynch was referring to. This is the old District Five that was unconstitutional, in red. This is what I guess you consider to be a fairly compact district, stretching from the border in the north, all

the way to Hopewell, down in the area of Jerry Stockman and Walter Foran.

Now, this is the bill before you -- the same District Five. I don't really see much of a difference between the two. So, I really can't buy the argument that you have made an effort, a genuine effort, to show the court that you want to meet their mandate. That is just one example of several that we can point to.

This is where I live. This is in the fish hook. This is the unconstitutional fish hook. We have green. You know, for a fish hook we want to-- And, under the present map, see the effort you have made to change that -- that's what the present fish hook looks like.

SENATOR ORECHIO: What kind of a fish is that, Senator DiFrancesco?

SENATOR DiFRANCESCO: I can't tell. You know, I'll argue that striped bass bill again if you want to bring that up.

This is the Howard district, a short district. It is another compact district, I suppose. This is better than District Five, I guess. This is the way you changed it.

In any event this is just to show you that there hasn't been much difference between what you passed before on a partisan basis, signed by former Governor Byrne, what the court said was unconstitutional, and the effort you made to correct some of the inequities in this bill.

If I could point out one other problem with your map, that is in the north -- and I have to confess I am not that familiar with Bergen County. But, in the Fourteenth District, there is one borough, the borough of Rutherford. That, at least based on our viewing of the map, is not contiguous. That is, in order to get from Rutherford to Carlstadt, there is a body of water inbetween those two communities, but there is no bridge. There is no bridge between those communities. You have to drive all the way around through another district.

Now, I know, Russo, in his own style, would gladly fly any Congressman from one part of this State to another. Perhaps someone can set up a service to service those particular people. But, I, for the life of me, can't figure out how you expected that particular

Congressman to get from the one community of Carlstadt to the Borough of Rutherford without swimming, as Chris Jackman is now implying. If he swims like we probably all do in the Senate, it would be a long time before he gets from one end of the Hudson to the other.

So, those were some of the points that I wanted to make, Senator Orechio. I do, in all seriousness, prevail upon you to reconsider this whole thing, and to do what the court thinks we should do: To take a hard look at congressional redistricting in a fashion that would lead us to bring together our own thoughts, as well as the Executive's thoughts, as well as the incumbent Congressmen, and let's see about drawing a map that is fair to everyone, not just to one particular party, or one particular set of party incumbents. Thank you.

SENATOR ORECHIO: Senator Russo.

SENATOR JOHN F. RUSSO: Thank you, Mr. President and members of the Senate. I spent most of a rainy afternoon the other day, in Florida, reading the Supreme Court opinion, a couple of times, and either I have forgotten how to read a Supreme Court opinion, or my colleague -- and he is certainly a very learned and intelligent colleague -- Senator DiFrancesco may never have read that court opinion. Because Senator DiFrancesco held up the configuration of several districts, and pointed out that, "here was one that was ruled unconstitutional, and look what we have done; it is the same configuration." Well, Senator DiFrancesco, there is nothing in that opinion that indicates that it was ruled unconstitutional because of configuration.

So, that is hardly a resubmitting of the same unconstitutional bill, or unconstitutional plan. The Supreme Court opinion ruled the plan unconstitutional because of population deviation. That has been corrected in this new bill.

Senator Hagedorn would argue that it could be corrected even further, and certainly we could get down to what we used to call in law, if you remember, the Reductio ad absurdum argument. We can come up with another one which cuts it down by a few other numbers, a very few in total, and say this one is even better.

But, clearly, unless I can't read opinions anymore, that Supreme Court opinion did not rule those districts to be unconstitutional because of the configuration of those districts -- only the population deviation.

Now, with regard-- Although we are, of course, debating one bill here, but we have referred to -- or Senator Hagedorn has referred to -- another one, and certainly I am sure he has made a determined effort, with the best of motives, to come up with a good solution, the problem with the so-called Hagedorn plan is that he would, I think, bring in an evil that isn't present so far, and that is the political argument of affecting one party or another.

In the Hagedorn plan, as I look at it, and as I look at the numbers, it would virtually eliminate two of New Jersey's most senior Congressmen, Congressman Howard, and Congressman Minish. And, we would lose the benefits of that seniority that it brings to the people of the State of New Jersey, by having them head the committees that they do head. Because under the voting records of the districts, as have existed in the past, we would no longer have Congressman Minish and Congressman Howard.

Now, I confess, if I were a Republican, I would like that plan for that reason; but, for the people of New Jersey, I am not so sure it is a good idea, and I think it offends the political deviation argument that the court referred to in its opinion.

But, in any event, I think anyone could come up with any plan, cut those numbers down a few more and say, "For that reason, it is a better one."

What has been presented to this body today is a good-faith effort. It doesn't eliminate Republican seats. It doesn't increase Democratic seats, at least not as I read the electoral results in the past campaigns. But certainly, the size or configuration of the districts was not the reason the court struck down the prior plan.

Again, I will stand corrected if I, in fact, misinterpreted the court's opinion. I don't think, though, that I have.

So, I submit, Mr. President and members of the Senate, although we are going to have a political difference on this issue no

matter what plan is presented, this one is a good-faith effort to meet the court's opinion and should be passed.

SENATOR ORECHIO: The chair recognizes Senator Dorsey.

SENATOR JOHN H. DORSEY: Mr. President, I didn't have the opportunity to read the Supreme Court decision in Florida, as Senator Russo did. I don't know whether that affected my reading or not.

As I understand his argument today, it is essentially that if he could produce a plan with perfect -- or with absolutely no population deviation, that that plan would absolutely be the correct plan. Well, I think that is reading something into the decision that is almost absurd. Because, as I read the opinion, he very specifically says that one cannot justify an absolute gerrymandering in a redistricting plan simply by producing a plan, which is a gerrymandered plan, which has no population deviation at all.

When Senator Russo criticizes Senator DiFrancesco's utilization of the term configuration, configuration may not have been utilized as he would have it used by Senator DiFrancesco in referring to the drawing of lines and the geographic designation on the map.

I think configuration is meant to mean, compactness is meant to mean, putting people together who have a similarity of interests, a similarity of interests in terms of being represented by a congressman. Therefore, perhaps configuration isn't the right term. But, configuration for the purposes of this map means putting people together in a district who have similar interests. And, that is precisely what has not been done. That is not what is done when you take a district, as you can, and produce perfect population deviation, or no population deviation, and, as Jeffrey pointed out to me today, run it by computer from the top of the State all the way to Cape May.

In terms of the plan you are presenting, I think it is interesting, if you read some of the footnotes in the Supreme Court decision, as to what Judge Gibbons said -- who happened to be a judge of the Third Circuit Court of Appeals who sustained, or overturned, the lower court's decision, and was ultimately overturned by the Supreme Court -- about the basic plan which you put forward. He wrote, "The apportionment now produced by Public Law 1982, Chapter 1, leaves me, as

a citizen of New Jersey, disturbed. It creates several districts which are anything but compact, and it has at least one district which is contiguous only for a yachtsman; therefore, they are talking about configuration, but they are talking about configuration in terms of compactness, and in terms of placing people with similar interests in similar districts.

That is what your plan does not do, and that is what will not be overcome by the utilization of computers to produce a low deviation.

SENATOR ORECHIO: The chair recognizes Senator Cardinale.

SENATOR GERALD CARDINALE: Not to repeat everything that I said the last time, but I think some of it does bear repeating. I live in Demarest. Demarest is part of this Fifth District. I think at one of our meetings I alluded to the fact that I perhaps could enter a contest with Senator Hurley as to who lives further from Trenton, and we might need a tape measure to determine the outcome of that kind of a contest. Yet, within one town of Trenton would be the same legislative district that this map would place me in, as far as a Congressional district. I think that is almost an absurdity when we consider the fact that we have alternatives which we could present to the Governor, which would certainly have at least as good a population deviation. And, Senator Hagedorn's proposal does have a population deviation which is somewhat smart.

Now, someone alluded to being a yachtsman in order to get from one part of one district to another part of that same district. I've had a map presented to me which indicates that to get to part of one of the districts -- to get from Rutherford to Secaucus, which would be the closest and would, in some peoples' minds, create some continuity -- there is a river running between, and it is not true that you would have to swim. There happens to be a little railroad bridge that joins those two communities. But, it is only open for certain hours of the day -- for a few hours each day. I think there was recently some regulation passed somewhere that said you shouldn't walk on those railroad tracks. So, unless someone is going to part the waters at some other hours of the day, it would be very, very difficult to consider those as being contiguous, and the people of Rutherford are

certainly left somewhat out in the cold. Maybe they can get a rowboat, but I just don't think this is a sincere attempt to create compactness.

With all due respect to the sponsor of the bill -- know that he worked very hard on it and many people have worked hard at trying to do these things -- what I think would be far more productive, so that I can be not just critical, is if we were to convene some committee, some bipartisan committee of the Legislature, composed of people of both houses, and sit down and try to work out-- And, you know, it was almost possible to do that with legislative districting. There are people in this room who served on that commission. They came very close to what was the eventual result with respect to legislative districts. So, it is possible, even with our partisan differences, for us to sit down and work out some of these things. And, perhaps there will be no political difference in a map that would be worked out in that fashion. Perhaps there could also be something of a benefit to the people who will ultimately live in whatever congressional districts are created -- and that is the advantage of being close to the person who represents them, being close to the offices of the people who represent them, so that they can feel more a part of it, and so that they can have a community of interest.

You know, I just learned a few moments ago that Senator Foran, with a constituency very different from mine, happens to be served by the same congress person. And, Senator Dumont, with still another constituency, happens to be -- and we are very far apart from one another. But, the people who live in that area are very, very important and should be our utmost consideration. The only way for us to do that would be for us to convene, rather than each working on our own separate bills, together and to try to work something out as a bipartisan effort.

There are bills that have been suggested. There are bills that have been suggested by members of both parties, which would accomplish that kind of result, except that some of them say we shouldn't do it now; we should do it ten years from now; we should do it at another point in time.

I think now is the time. We certainly do have a few weeks left before we have to absolutely produce a plan. And, I am sure that both parties would be very, very eager to produce people if it wants a consensus.

So, that is my suggestion on a positive note. And, I did want to point out to Senator Lynch that he might not have seen because the representation might not have been so graphic, there really is only a little railroad bridge connecting those two communities. And, I hope that we could have a better result than that. Thank you.

SENATOR ORECHIO: Senator Lynch.

SENATOR LYNCH: Mr. President, I would like to respond to a couple of the allegations. It is easy to criticize any map on the basis of partisan or absolute gerrymandering. I think what is absent is criticism based upon some objective standards, and I think the map which forms the basis of S-10 does have, built into it, objective standards.

It is easy to talk about configuration, and it is easy to say you want a bipartisan commission to do this. If you look at the product of the bipartisan commission that drew the legislative district maps, one will find that we have some very odd shaped lines and configurations there. Senator DiFrancesco's district is shaped like a vise. We had districts — the Seventh and Eighth Districts — that ran from the eastern border of the State to the western border of the State.

The configuration is not the absolute answer. What is clear, I think, in the mandate of the Supreme Court, is that there be objective standards, and some of those that they enunciate are those that are being found here -- population deviation, sensitivity to incumbencies, sensitivity to the minority voting districts, and sensitivity to dislocation. Those aren't addressed in the corresponding bills.

Senator Hagedorn's map originally reduced the overall deviation that we had from the bill that was passed in the last Legislature by only seven people, but cutting the black plurality in the Newark District Ten by two percentage points.

The Republican maps keep shifting as one flaw after another is found. The last map, introduced the last day of the old session, restored the black percentage as it exists here in S-10, and the deviation jumped back to a total of sixty-seven people.

District Five, as I pointed out earlier, basically follows in our map the traditional approach to what was District Seven and Six, going back to what we had here for some fifty years. As I understand it, Congresswoman Roukema has been reported as saying she favors the lines that are there.

Those things, I think, are significant. Those things do have some objectivity to them, not the criticism that we have seen brought before us.

There is no question that bipartisan commissions produce bizarre shapes, as bizarre as we have here. But, what lies behind those shapes, and whether or not you have preservation of core areas, meeting the objective test of deviation, minority representation, incumbency, and the like, I think are overriding and more important than that.

As Justice Brennan pointed out in the footnote to his opinion, he felt, I believe strongly, that the old plan could have been satisfied, and should be satisfied by the deviation criticism, as well as being satisfied, to some extent, by the drawing of a new plan that was sensitive to the shifting of voter populace.

This plan, above all, was sensitive to that. So, for all of the aforementioned reasons, for those stated by Senator Russo, I move the bill.

SENATOR ORECHIO: Senator Hurley, and Senator Russo, in that order.

SENATOR JAMES R. HURLEY: Mr. President, may I just ask the sponsor a couple of questions?

SENATOR ORECHIO: Oh, sure, he would be very happy to respond to your questions, Senator Hurley.

SENATOR HURLEY: Can you tell us, sir -- through you, Mr. President -- if there is a difference in the number of, what we might term fragmented counties in this plan that you are advancing and in the one that was struck down?

SENATOR LYNCH: To answer your question directly, there is a difference in the fragmented counties to some extent. I think the current bill has thirty-five, or something in that neighborhood. But, there is not a constitutionally prescribed, as enunciated by the Supreme Court decision.

SENATOR HURLEY: Through you, Mr. President, you just led us to believe that there were factors taken into consideration, other than the population deviation. Can you speak specifically about gerrymandering? For example, is there any difference in degree, in your opinion, of gerrymandering in this plan versus the plan that was struck down?

SENATOR LYNCH: Senator, I have to respond to your question with a question. What is gerrymandering?

SENATOR HURLEY: You, sir-- I am the asker of the questions, and in this case, you are the answerer.

SENATOR LYNCH: We have to define your terms, and I don't understand the term.

SENATOR HURLEY: On the bill, Mr. President.

SENATOR ORECHIO: On the bill, Senator Hurley.

SENATOR HURLEY: A number of people have referred to the Supreme Court decision today, and have quoted from it, or at least have told us that they read it and spoke about it.

Let me just read for you, or tell you about Justice Powell in his dissenting opinion. He stated that the, "...uncompromising emphasis on numerical equality would serve to encourage and legitimate even the most outrageously partisan gerrymandering. The plain fact is that in the computer age...political... gerrymandering can be....," created at the whim of an operator. That is precisely the point we are trying to make here, that you have perhaps answered to some people's satisfaction, anyway, the population deviation argument. But, those were spoken to by the court as not the only factors that have been taken into consideration -- at least not to our satisfaction. They may be to Senator Lynch, and I think he has spoken to that. They certainly weren't, in the previously advanced plan, to Justice Powell.

I don't think anybody ought to be led to believe that this is a new redistricting plan. It is the same old unconstitutional plan, with some minor adjustments. The old plan was unconstitutional, not only for population deviation but for gerrymandering. And, so is this new plan. I say that because I believe it deserves to be struck down, and I think this body of the Legislature ought to vote accordingly today.

SENATOR ORECHIO: The chair recognizes the Majority Leader, John Russo.

SENATOR RUSSO: Thank you, Mr. President. Just briefly, and in conclusion, a couple of very interesting arguments were made in opposition to this bill, first by Senator Dorsey, who accurately quoted Judge Gibbons, in the Third Circuit Opinion, as a supporter of his position against this bill. But, what he didn't remember to point out was that Judge Gibbons voted in the minority to sustain the plan that was before the court.

SENATOR DORSEY: I pointed that out.

SENATOR RUSSO: I have just been corrected by Senator Dorsey, who says he pointed that out. I didn't hear it, but I will emphasize it then, that the arguments made by quoting Judge Gibbons from a judge who voted to sustain the plan that is now being argued as the same old unconstitutional plan. And, interestingly -- interestingly -- my other good colleague who just spoke, Senator Hurley, quotes Justice Powell, and Justice Powell voted to sustain the plan. What Justice Powell criticized was not gerrymandering, but partisan gerrymandering, which he found not to exist under the plan that is before us. And, that is a very significant point, because I repeat only once for emphasis: You can't make these districts square, round, or one uniform shape. You are going to have that kind of a situation in almost any plan, but by the very arguments advanced through the words of Judge Gibbons and Justice Powell, this type of plan is constitutional.

SENATOR ORECHIO: Did you say you moved the bill, Senator Lynch?

SENATOR LYNCH: I did.

SENATOR ORECHIO: Senator Lynch moved the bill. I direct the secretary to open the machine.

(At which time machine was opened and vote was taken)

Senate Bill 10, having received twenty-three votes in the affirmative and sixteen in the negative, I declare the bill passed.

(Debate Concluded)