ANALYSIS OF THE DUTCHESS COUNTY REDISTRICTING PLAN

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THE BENJAMIN CENTER
SUNY NEW PALTZ

Joshua Simons, Senior Research Associate
simonsj@newpaltz.edu

Introduction

The Dutchess County Independent Redistricting Commission has created a redistricting plan for the County that satisfies all of the federal, state, and local legal requirements for redistricting, and most importantly maintains a low population deviation between all of the districts in adherence with the requirements of equal representation. It does not split municipalities with a population of less than 40% of the ideal district size (as required by MHRL Section 10). The redistricting plan creates a Black-majority district in the city of Poughkeepsie, avoiding potential violation of the Voting Rights Act. The redistricting plan keeps every village in the county whole. It makes use of both natural and physical geography such as streams and highways as district boundaries where possible, and when not using the municipal boundaries themselves. It strikes a balance between respecting municipal boundaries and utilizing natural breaks in the geography when municipalities must be split. An unfortunate side effect of the state law prohibiting the splitting of lower population municipalities is that some municipalities that fall above 40% are split more than they would be should the law not exist. This is not necessarily a weakness of this redistricting plan so much as a consequence of new state redistricting laws.

Federal Voting Rights Act

Section 2 of the Voting Rights Act (VRA) of 1965 prohibits discrimination in redistricting on the basis of race, color, or membership in a protected minority group, as defined by the act. In the 1986 Supreme Court Case *Thornburgh v. Gingles*, the Court established three pre-conditions that must be met before a successful challenge of a redistricting plan can be made. These pre-conditions are:

- The protected minority group must be sufficiently large, and geographically concentrated enough to constitute a majority of a single-member district
- The minority group must be politically cohesive, and vote as a bloc; and
- The white majority must vote sufficiently as a bloc to enable it, absent special circumstances, to defeat the minority's preferred candidate.

The VRA report conducted for the redistricting committee identified that in the City of Poughkeepsie, the first Gingles precondition for a Voting Rights Act claim had been met. There is a sufficiently large and geographically concentrated black population in the city to constitute more than 50% of a county legislative district. The report also observed that voting patterns in past city-wide mayoral races indicated that it is possible that a pattern of racially polarized voting in the city could be found. It was the recommendation of that report that the creation of a minority-majority district in the City of Poughkeepsie be considered to avoid the potential for a Voting Rights Act claim against the County. This plan implements that recommendation by creating District 10, a Black-majority district in the City of Poughkeepsie.

One thing of note is that Dutchess County Local Law No. 1 of 2022 requires that: "Evidence of compliance with United States Voting Rights Act Section 2 shall be included with said draft plan." While compliance with the Voting Rights Act is absolutely necessary, the requirement that the commission provide evidence of compliance is problematic.

Firstly, it is typically incumbent on a plaintiff in a suit to provide evidence that the VRA has been violated, and not for a defendant to prove that they did not violate the Act. Secondly, if the first Gingles precondition is met, there are not many other things other than a racially polarized voting analysis that

can meet an evidentiary standard to determine if a minority-majority district must be created. If it was the intent of this law that the redistricting commission should be required to hire a consultant to conduct a racially polarized voting analysis, then it should state that explicitly. If, however, the intention is to ensure that the commission complies with the Voting Rights Act, then the Legislature should consider rewording this portion of the law in a way that gives the commission more flexibility.

In this instance, the creation of District 10 as a minority-majority district is likely not the best way to redistrict the county legislative districts within the City of Poughkeepsie. Since, however, the electoral history of District 9 and 10 and the City of Poughkeepsie as a whole, do not clearly indicate that there is not an issue with racially polarized voting within the city, and there is some evidence to suggest that it is possible that racially polarized voting does exist within the city, the safest option to comply with both the Federal Voting Rights Act, as well as Local Law No. 1 was to create the minority-majority district.

John R. Lewis Voting Rights Act (NYS)

In creating the Black Majority District in the City of Poughkeepsie, the County has protected itself against a potential claim under the Federal Voting Rights Act. On June 20th, 2022, Governor Hochul signed into law the John R. Lewis Voting Rights Act. The NYS Voting Rights Act significantly lowers the threshold that must be met by a Federal Voting Rights Act claim. This includes, for purposes of a NY Voting Rights Act claim, that "WHERE THERE IS EVIDENCE THAT MORE THAN ONE PROTECTED CLASS OF ELIGIBLE VOTERS ARE POLITICALLY COHESIVE IN THE POLITICAL SUBDIVISION, MEMBERS OF EACH OF THOSE PROTECTED CLASSES MAY BE COMBINED"[1]. Under the State Voting Rights Act, if the Hispanic community in District 9 were shown to be politically cohesive with the Black community there, then District 9 would also be considered a minority-majority district under state law. While there have been no cases brought under this act as it was enacted the day before this report was written, there is no reason to believe that the Commission's redistricting plan in any way violates the John R. Lewis Voting Rights Act of 2022.

New York State's New Redistricting Law

On October 28th, 2021 Governer Hochul signed A229c into law. This new legislation amends two portions of the State's Municipal Home Rule Law to set requirements for charter and non-charter counties, as well as other municipalities in the State that must undergo redistricting every ten years. This redistricting law makes the redistricting requirements for counties, cities, towns and villages more stringent by:

- Decreasing the permissible deviation between the greatest and lowest population districts in the plan from 10% of the mean population of a district to 5% of the mean population of a district;
- Codifying into State law prohibitions against diminishing the opportunity for racial and ethnic minority groups or diminishing their ability to elect candidates of their choice;
- Prohibiting political gerrymandering;
- Consideration of communities of interest and pre-existing political sub-divisions;
- Prohibiting splitting municipalities with a population that is less than 40% of the ideal population of a district; and
- Consideration of election administration.

[1] New York State Elections Law Article 17, Section 2 (17-206.2c-IV)

Population Equality

This redistricting plan complies with the federal and more stringent state requirements for population deviation. The highest population district, District 5, is 2.40% above the ideal district population, while the lowest population district, District 7, is -2.48% below the ideal district population. The total deviation for the plan is therefore 4.88%, which is less than both the federal requirement of 10%, and the state requirement of 5%.

Contiguity

The Districts were designed to be contiguous. Throughout the process of drawing districting plans, and repeatedly revising those plans, it appears that several census blocks were left floating, disconnected to the districts they are assigned to. It is recommended that the following census blocks be reassigned to maintain contiguity of the districts:

360270000001002 : Pop: 22 : Assigned to D5, surrounded by D14
360271902043018 : Pop: 0 : Assigned to D14, surrounded by D15 and D13
360270801032010 : Pop 0 : Assigned to D3, surrounded by D6 and D2
360271800012003 : Pop: 13 : Assigned to D24, surrounded by D2, D3, and D22
360271800012004: SAME AS ABOVE
360272000013048 : Pop 5 : Assigned to D24, Surrounded by D25 and D22

Compactness

In terms of compactness, the redistricting commission's plan is slightly more compact than the current legislative districts. The plan contains no districts with portions that unusually stretch or meander. There is no concern with this plan regarding compactness.

Prohibitions on Racial Gerrymandering

The creation of a minority-majority district while avoiding racial packing definitively meets both the Federal and State prohibitions on racial gerrymandering.

Prohibitions on Political Gerrymandering

The Dutchess County Charter amendment creating the Independent Redistricting Committee specifically prohibits the use of "Actual, expected, or projected electoral results, voting patterns, polling data, enrollment data, or any other data relating to expected partisan allocations of vote totals", except as required by Federal or State laws such as the Voting Rights Act. New York State's new redistricting law that says: "Districts shall not be drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties."[2] Since any change to the current districts potentially favors or disfavors one candidate over another, and since the language contained in section ii of the same law with regards to "…the intent or result of…", the prohibition contained in this section is on intentionally drawing districts to favor or favor incumbents, particular candidates, or political parties.

[2] NYS MHRL Section 10a.13-V

The redistricting plan presented by the commission was drawn without any knowledge of the incumbents' addresses, or any voter registration or electoral data. It was pointed out in another consultant's report on this plan that three districts are drawn two include two Republican incumbents. This unfortunately presents something of a Catch 22 for the commission. It was not their intention to make Republican Legislators run against one another in three of these districts, and they did not know at the time that this would be the case. Now that they are aware of this, they are paradoxically prohibited from changing it, as to do so only based on incumbency and political party would be obvious favoritism for incumbents. Much is likely to be made of this. In order to withstand scrutiny, the commission should include in its final report the other ranked priorities and requirements that are satisfied by the districts where incumbents are paired, and demonstrate the reasons for drawing the districts in this manner. The commission should demonstrate that the pairing of incumbents is the result of drawing lines to satisfy other requirements and priorities.

Consideration of Communities of Interest

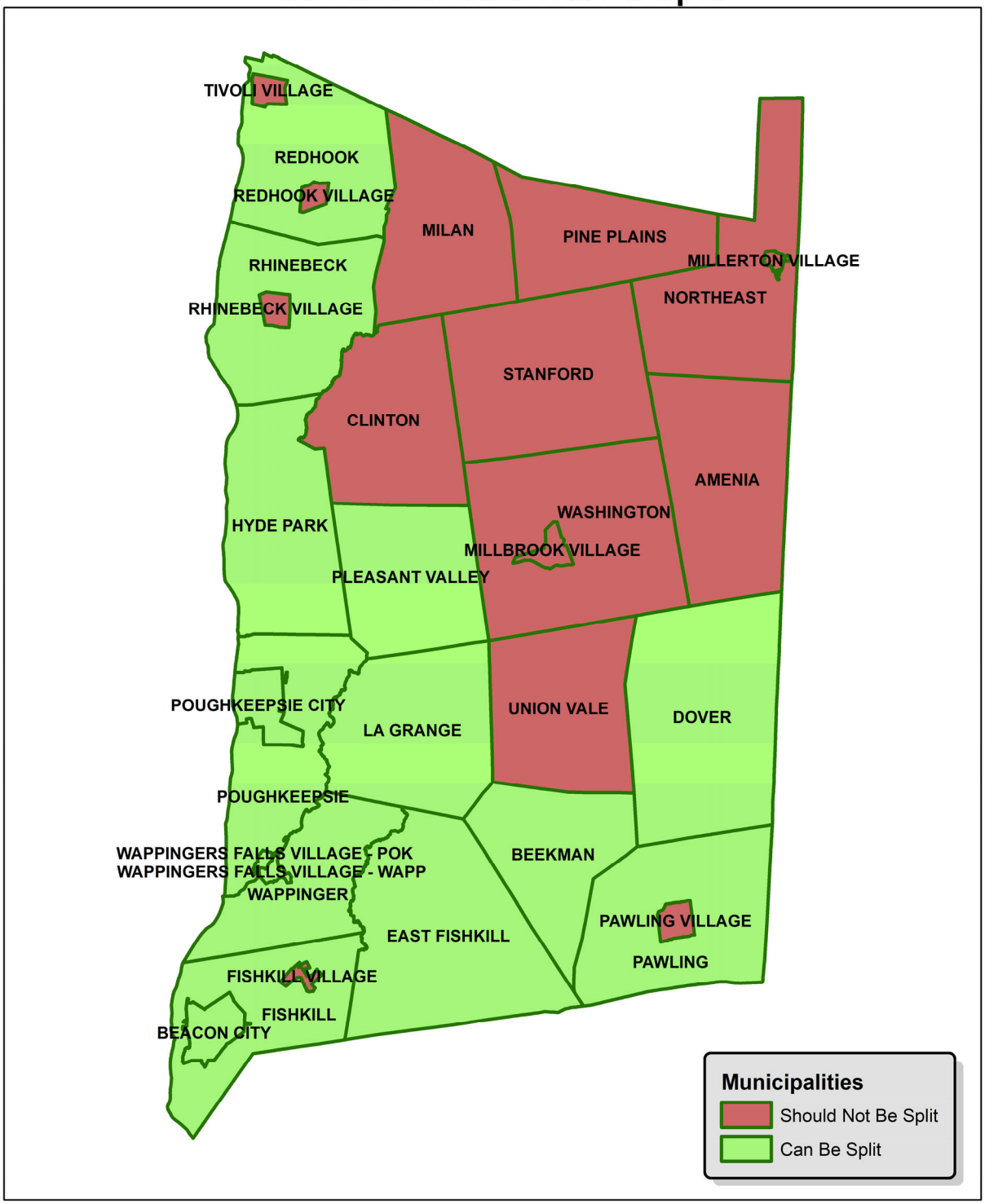
The plan appears to take into consideration existing communities of interest wherever possible. Since these communities are often self-identifying, public engagement throughout the redistricting process is crucial for these communities of interest to be identified and heard. The redistricting commission has held a number of public information sessions and public hearings, and the public comments and testimony at those meetings has been considered, debated, and incorporated into the plan.

Prohibition on Splitting Smaller Municipalities

The final portion of the requirements and priorities established in federal and state law, as well as the County Charter involves the splitting of municipalities. There are two elements of state law addressing the splitting of municipalities. The first requires the consideration of existing political subdivisions, and the second prohibits the splitting of municipalities that have a population that is less than 40% of the ideal district size (the population of the county divided by the number of districts), unless it is necessary to do so in order to create a legal redistricting plan.

For counties like Dutchess County, where portions of the county are rural, but others have relatively high population density, this presents a problem. In Dutchess County, the towns of Milan, Pine Plains, Clinton, Stanford, Northeast, Amenia, Washington, and Union Vale, as well as the villages of Tivoli, Red Hook, Rhinebeck, Millerton, Fishkill, and Pawling all fall into this category. As illustrated by the map below, this creates a large swath of the county where municipalities should not be split.

Municipalities in Dutchess County that Can and Should Not Be Split



The commission's redistricting plan does not intentionally split any of the municipalities that under state law should not be split unless necessary. The unavoidable consequence of adherence to this law is that

more of the municipalities that can be split had to be split. This was not due to any preference of the Commission, but rather is an unfortunate consequence of adherence to the state law. In this redistricting plan, no village, including the Village of Wappingers Falls, which is in both the Town of Poughkeepsie and the Town of Wappinger, are split.

In comparison to the last draft of the map, this plan splits municipalities less. The Commission's Draft B split municipalities in the County into 43 portions. Draft C split municipalities into 37 portions. The final map splits municipalities in the County into 32 portions. The current legislative districts split municipalities in the County into 33 portions.

Although overall there are a similar number of municipal splits, one municipality, Pleasant Valley, sticks out as problematic. The Town of Pleasant Valley in this plan is split into four legislative districts. Part of the reason for this is that the legal requirements of redistricting are different now than they were 10 years ago. The acceptable population deviation is smaller, and there is a direct prohibition on splitting smaller municipalities unless necessary. The larger part of the reason that Pleasant Valley is split into four sections is a direct result of decisions made by the commission either in response to public comments, or for other reasons. For instance, because of the prohibition on splitting smaller municipalities unless necessary, the decision to make the Town of Dover whole ended up necessitating another split somewhere else. When coupled with the decision to split the town of Lagrange less, the only other place to split was Pleasant Valley. Similarly, the decision to group Milan with Pine Plains and move District 20 to include the northern portion of the Town of Rhinebeck made it necessary to either split Pleasant Valley again, or to split the Town of Hyde Park again. Greater flexibility in the population deviation used to allow districts to be drawn that were more contiguous with municipal lines. Less flexibility, and prohibitions on splitting smaller municipalities unless necessary inevitably lead to more splits of municipalities that can be split.

In the process of reviewing this plan, several instances of municipalities being split by single census blocks along municipal borders were found. It is assumed that this was unintentional:

Block 360270300002031 technically splits the Town of Clinton
Block 360271700002017 technically splits the Town of Stanford

The Town of Union Vale is technically split by three small blocks: 360271800011002, 360271800014007, and 360271800014006.

It is recommended that these census blocks be reassigned so that these smaller municipalities are no longer technically split.

Conclusion

Undertaking the process of Redistricting is a large and difficult task under the best of circumstances. The Dutchess County Redistricting Commission has had the added disadvantage of a compressed timeframe due to the late release of the 2020 Census Data, and the dissolution of the first redistricting commission. Adding to this, the legal requirements for local redistricting in New York State have significantly changed since redistricted was done last. In the past, redistricting was given more flexibility, and more of the

priorities that drive the process were determined at a local level, rather than being dictated by state law. Despite these disadvantages, the commission has completed its work, balancing a complex set of legal requirements and priorities while listening to public input, and has passed a legal redistricting plan.

While not perfect, this plan fulfills all of the federal, state, and local legal requirements, and most importantly restores substantially equal populations to the county legislative districts. This plan complies with the Federal Voting Rights Act, and appears to comply with the newly passed New York State John R. Lewis Voting Rights Act as well. It creates districts that are slightly more compact than the current districts and that also split municipalities slightly less than the current districts. The commission drew the plan without knowledge or consideration of incumbent addresses, and did not utilize any political or election data in the process. The commission considered the political sub-divisions of the county as well as communities of interest, and in general, balanced all of the legal requirements, priorities and preferences for district boundaries in the creation of this plan.