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## News Coverage on Redistricting Senate Size

### The Senate GOP's extra seat: hidden method or manipulation?

[Colby Hamilton](#) [1] [2] [2] [2] [2]

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<http://www.wnyc.org/blogs/empire/2012/jan/10/the-senate-gops-extra-seat-hidden-m...> [3]

[Late in the workday last Friday](#) [4] the [long-anticipated LATFOR bomb dropped](#) [5]. There was no press release or announcement. Instead, [a word or two were changed on the committees website and a new link to a document](#) [6] were all that indicated that the size of the New York State Senate would increase from 62 to 63 seats next year.

[The move has been bashed by Senate Democrats](#) [7] (the Governor and Assemblymembers have been tellingly silent) and good government groups since it was noticed after 5 pm on Friday. They argue its a purely political attempt for the Senate Republicans to manufacture and maintain their majority. Senate Republicans are [defending the decision](#) [8] as constitutional.

How the GOP can justify a new seat requires a bit of state constitutional knowledge. Unlike the Assembly, which has its number firmly set at 150, the Senate's number is dictated by a formula that allows it to grow alongside the state's population. (Jimmy Vielkind of the *Times Union* has [a detailed breakdown of the math](#) [9] behind the change.)

At least that's the idea. The problem really lies in the fact that the formula was decided upon and made law before a pretty big development occurred for New York: the incorporation of the City of New York in 1898. The Senate's formula didn't take into account the dividing of Queens County into the borough and Nassau County, nor the creation of the Bronx as its own county in 1914. Likewise Staten Island and Suffolk County were grouped into one Senate district.

This is the crux of why there's even a debate over how many seats there are in the Senate. From 1972 to 1992, there was one agreed upon interpretation of how to apply the formula, per a ruling by the state's highest court. The reason Senate Democrats are so angry over the 63rd seat announcement is because they believe Republicans are, again, changing how they want to count the counties that have morphed since 1894.

## **Many Ways to Skin A County**

I say "again" because Senate Republicans changed their process before, during the 2000 redistricting. The portion of the Bronx east of the Bronx River had traditionally been included in a tally of the borough as a whole. In the 2002 redistricting, Senate Republicans split the Bronx in half, putting the eastern portion in with Westchester as it had been in 1894. Likewise Queens and Nassau were recombined to be a single unit for the purposes of seat counting.

All this was laid out in a memo by the Republicans' DC-based lawyer, Michael Carvin, [in a memo from March 2002](#) <sup>[10]</sup>. At the time Democrats were furious with the change, accusing Republicans of blatant partisan manipulation.

Turns out they weren't entirely off.

## **An Issue That Has History**

[In internal letters](#) <sup>[11]</sup> to Senate Republican leaders at the time, people working on the redistricting described creating "wobble room" on the issue of adding a seat, negating the argument that it was mandated by population change and the constitution. Additionally, in another letter, the author describes a way to "strengthen" Republican members by packing together "politically undesirable areas" on Long Island that just happened to be where large numbers of minorities lived.

The letter uploaded to the LATFOR website last Friday was also written by Carvin. And, according to Todd Breitbart, who worked with Senate Democrats back in 2002, "exactly the same thing is happening now."

The problem, Breitbart says, is that the system Carvin described in 2002 wouldn't have resulted in a new seat.

"It turns out that they would produce the same result--still 62 districts--in 2010," he said. To get to 63, Carvin had to break with the system he'd proposed a decade ago.

## **Ten Painful Years**

In the old memo, Carvin never mention how he was treating the old county combination that included both Staten Island and Suffolk County. In the new one he does: unlike the Queens/Nassau combo, Carvin brings back that ol' 1894 style and counts the two as one.

This makes a big difference. If, as Breitbart had thought, Carvin's calculations were splitting up

the two old districts, you couldn't get to 63 seats. Instead, Breitbart believes Carvin is guilty of mixing and matching whichever process resulted in a number of seats most beneficial to Senate Republicans.

"He doesn't call attention to the fact that he's applying a different formula to the two pairs of counties, nor does he give any reason why there should be a different formula for the two pairs of counties," Breitbart said.

As Breitbart noted in a response to the new Carvin memo (emphasis mine):

Mr. Carvin's March 7, 2002 memorandum does not mention the Richmond/Suffolk combination. **It was unnecessary to do so, since both methods would have produced the same result.** If he meant to distinguish the Richmond/Suffolk case, and to arrive at the same result, but by a different constitutional reading, he did not reveal that until January 5, 2012. **If the two cases were indeed distinguished in 2002, Mr. Carvin has held that secret in his heart of hearts for ten painful years.**

According to Carvin, that's exactly what happened.

### **A Method, Hidden**

"We did exactly the same methodology that was followed in 2002, which everyone—including Mr. Breitbart—concedes was perfectly constitutional," Carvin said in a phone interview. "He just misunderstood what we did in 2002."

Carvin went on to say that handling Staten Island and Suffolk County makes sense: Unlike the Bronx, Westchester and Nassau, Staten Island actually existed independently in 1894—a virtue of being an island instead of a line dividing a solid piece of land.

Breitbart says the idea that the same method is being used is "a lie" because "if that was a true they could have made this announcement at the end of last March" when census data was released. Carvin countered that by pointing out that his memo was released three months sooner than the one in 2002--Senate Republicans are actually ahead of schedule.

While the math for getting to 63 seats is debatable, the reality of it happening appears to work directly to the benefit of Senate Republicans. A report in City and State this morning highlighted how a 63rd Senate Seat could help nullify the effects of prisoner reallocation.

One of the real concerns of a new seat is where it will be. Democrats are concerned Senate Republican maps could use the new seat to carve out a minority district that spans Nassau and Queens County. The move would effectively neutralize the growing Latino and African American populations on Western Long Island, and help protect the Republicans' thin majority in the Senate.

Until Senate Republicans release maps, the impact of a 63rd Senate Seat will remain unknown. But good government groups and Senate Democrats are already looking for opportunities to fight

the plan. This adds another layer of uncertainty for New Yorkers as to when they'll know what political districts they'll be voting for candidates in come November.

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