

EXHIBIT B

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN

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TIM HARKENRIDER, GUY C. BROUGHT,
LAWRENCE CANNING, PATRICIA CLARINO,
GEORGE DOOHER, JR., STEPHEN EVANS, LINDA
FANTON, JERRY FISHMAN, JAY FRANTZ,
LAWRENCE GARVEY, ALAN NEPHEW, SUSAN
ROWLEY, JOSEPHINE THOMAS, and MARIANNE
VOLANTE,

Index No. E2022-0116CV

Petitioners,

-against-

GOVERNOR KATHY HOCHUL, LIEUTENANT
GOVERNOR AND PRESIDENT OF THE SENATE
BRIAN A. BENJAMIN, SENATE MAJORITY LEADER
AND PRESIDENT PRO TEMPORE OF THE SENATE
ANDREA STEWART-COUSINS, SPEAKER OF THE
ASSEMBLY CARL HEASTIE, NEW YORK STATE
BOARD OF ELECTIONS, and THE NEW YORK STATE
LEGISLATIVE TASK FORCE ON DEMOGRAPHIC
RESEARCH AND REAPPORTIONMENT,

Respondents.

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**EXPERT REPORT
OF CLAUDE A. LAVIGNA
FEBRUARY 14, 2021**

Expert Report of Claude A. LaVigna

I. Professional Experience

I am a political research and campaign strategist with over 30 years of experience and expertise. I am a national pollster who has conducted survey research for leading elected officials, corporations and public affairs initiatives for decades. I provide strategic guidance on political trends and have deep understanding of partisan influence in redistricting efforts and political campaigns. Through my experience as a political strategist, I have developed a deep understanding of New York's geographical and political landscape. My knowledge includes an understanding of New York's diverse local towns and communities, as well as the state's larger regions and media markets. I have a Bachelor of Arts degree from the State University of New York at Albany.

II. Scope of Engagement

I have been retained by Troutman Pepper Hamilton Sanders LLP on behalf of their clients, Petitioners in the above-titled action, to evaluate the 2022 state Senate and Congressional maps, 2021–2022 N.Y. Reg. Sess. Leg. Bills S.8196, A.9039-A, A.9040-A, and A.9168, enacted by the New York State Legislature and signed by Governor Kathy Hochul. I have been retained and am being compensated at \$300 per hour to provide my expert analysis of incumbent-protection and partisan-gerrymandering factors in the state Senate and Congressional maps and to determine if the maps violate the clear prohibitions against partisan and incumbent-favoring/disfavoring gerrymandering found in Article III, Section 4(c)(5) of the New York Constitution and New York Legislative Law § 93(2)(e). Specifically, I analyzed whether there is any coherent explanation for the new Congressional and state Senate district lines except for seeking partisan and incumbent-protection advantage, including by reducing competitiveness. My analysis is based on my review of the enacted 2022 Congressional and state Senate Maps in light of New York's political geography. I also compared the 2022 maps against the 2012 maps. 2011–2012 N.Y. Reg. Sess. Leg. Bills S.6696 and A.9525 (as technically amended by S.6755 and A.9584); *Favors v. Cuomo*, No. 11-CV-5632, 2012 WL 928223 (E.D.N.Y. Mar. 19, 2012).

III. Summary of Opinions

Based on the work performed as addressed in the following sections of the report, I hold the following opinions to a reasonable degree of professional certainty:

- Both the 2022 Congressional and state Senate Maps reveal clear evidence of districting with the purpose of seeking partisan and incumbent-protection advantage, including by reducing competitiveness.
- The 2022 Congressional Map splits up towns, counties, and communities of interest with no rational explanation apart from incumbent-protection and partisan gerrymandering.
- The 2022 state Senate Map similar splits up towns, counties, and communities of interest with no rational explanation apart from incumbent-protection and partisan gerrymandering.

IV. Exhibits

- Exhibit 1: Map of New York's 2012 Court-Drawn Congressional Districts
- Exhibit 2: Map of New York's 2012 Legislature-Enacted State Senate Districts
- Exhibit 3: Map of New York's 2022 Legislature Enacted Congressional Districts
- Exhibit 4: Map of New York's 2022 Legislature-Enacted State Senate Districts
- Exhibit 5: Resume of Claude A. LaVigna

V. Analysis of the 2022 Congressional Map

The 2022 Congressional map creates a partisan gerrymander with no coherent explanation except for seeking partisan and incumbent-protection advantage for the Democratic Party, including by reducing competitiveness. This includes "cracking" Republican communities by splitting them into multiple districts to dilute their political power and "packing" Republican voters into the same district, resulting in oddly shaped, stretched-out districts that waste Republican votes and strengthen Democrats' power in the surrounding areas.

The following examples illustrate the Legislature's intent to favor the Democratic party and protect Democratic incumbents and candidates, while disfavoring Republican incumbents and candidates and reducing competitiveness:

The Legislature entirely rearranged Congressional Districts 1 and 2 in the 2022 map, exchanging Republican voters for Democratic voters with no coherent explanation except for seeking partisan and incumbent protection advantage, including by reducing competitiveness. The new map moves areas with high populations of Republican voters into new Congressional District 2 while moving heavily Democratic communities into Congressional District 1. The Republican communities in Brookhaven on Long Island's South Shore are now in District 2, whereas the strongly Democratic areas in the center of Long Island are now in District 1. This partisan revision

creates multiple new town splits and adds an additional county split where Congressional District 1 now extends into Nassau County between Oyster Bay and Huntington. The Legislature effectively shifted Congressional District 1 from a strong Republican district into a Democrat-leaning district by packing Republicans into Congressional District 2. In addition, this redrawing turned District 2 from a sure Republican district into an overwhelmingly Republican stronghold.

The Legislature completely transformed Congressional District 3 with no coherent explanation except for Democratic partisan and incumbent-protection advantage, including by reducing competitiveness. District 3 in the 2012 court-drawn map connected Suffolk and Nassau counties, with a slight reach into Queens County. The new District 3 extends from Suffolk County, through Nassau, Queens, and Bronx counties, all the way into Westchester County. It reaches across the Long Island Sound to capture Democrat strongholds along the shore, stretching in a thin strip up to the Town of Rye. The new District 3 can only be explained by seeking partisan and incumbent-protection advantage because this combination of counties and communities have no nexus and share no communities of interest. In drawing the Congressional District 3 in this way, the Legislature decreased competitiveness, transforming Congressional District 3 from a competitive district to a Democrat stronghold.

The new Congressional Districts 8, 9, 10, and 11 illustrate how the Legislature “cracked” established Republican-leaning communities of interest in Brooklyn to create a partisan advantage for Democrats. By breaking up concentrated Orthodox Jewish and Russian communities with strong social and cultural ties, the new map spreads conservative Republican-leaning voters across multiple districts. These new districts move large numbers from the Russian Jewish communities in Brooklyn into Congressional District 8 and divide the Orthodox Jewish communities between Congressional District 9 and Congressional District 10. The Legislature also divided an established Asian community in District 10 by moving half of it to District 11. Previously a Republican-leaning district covering Staten Island and adjacent communities in southern Brooklyn, the new District 11 combines Staten Island with unrelated and heavily liberal areas in Brooklyn—Sunset Park, Red Hook, Gowanus, Windsor Terrace, and Park Slope—which fundamentally alters the political composition of this district. These redrawn Brooklyn districts have no coherent explanation except seeking partisan and incumbent-protection advantage, with bizarre boundaries that break up communities of interest and combine unrelated communities for no logical reason.

Similarly, the new Congressional District 16 “cracks” Republican voters out of Congressional District 18 by connecting a section of the Bronx all the way up to Putnam County. This removes Republican voters from rural and suburban communities in Westchester County and combines them with the Democratic strongholds of Mount Vernon and Yonkers. District 16 in the 2012 map almost entirely consisted of parts of Westchester County, along with a small section of Bronx County for population purposes. The new District 16 has no coherent explanation except seeking Democratic partisan and incumbent-protection advantage, as it connects the heavily Republican towns of Putnam Valley, Carmel, Yorktown, and Somers to densely populated Democratic communities and neutralizes these Republican voters. District 16 is now comprised of geographically distant communities that have few to no commonalities.

The new Congressional District 18 has no coherent explanation except for seeking partisan and incumbent -protection advantage, including by reducing competitiveness. The packing of Republican voters into Congressional District 16 makes Congressional District 18 a safer Democratic district. The new District 18 is bizarrely shaped, extending into the Ulster County towns of Rochester and Wawarsing and reaching around into Peekskill, Cortlandt, North Salem, Lewisboro, Bedford, and Pound Ridge, with central portions of Putnam and Westchester counties carved out into Congressional District 16. As a result of this maneuvering, Congressional District 16 remains a safe Democratic district, while District 18 shifts from a Republican-leaning district to a Democratic district.

The new Congressional District 17 has no coherent explanation except for seeking partisan and incumbent-protection advantage, including by reducing competitiveness. It is contorted to combine strong Democratic areas with unrelated, rural Republican communities. Just as with the Legislature’s reconfiguration of Brooklyn, District 17 “cracks” conservative Jewish communities to neutralize their Republican votes. Congressional District 17 in the 2012 court-drawn map was compact and confined to just Rockland and Westchester counties. The new District 17 stretches from Sullivan County across Orange and Rockland counties into Westchester County, picking up strong Democrat communities including Greenburgh, Mount Kisco, and White Plains. The District separates Orthodox communities, incorporating communities in Sullivan and Rockland counties while excluding the Kiryas Joel Jewish community in Orange County. As a result, Congressional District 17 remains a reliable Democratic district.

The new Congressional District 19 has no coherent explanation except for seeking partisan and incumbent protection advantage, including by reducing competitiveness. It is drawn with each of its four corners reaching into the strongly Democratic areas. The new District 19 extends through Republican communities in Columbia and Greene counties to pick up the Democratic stronghold of Bethlehem in Albany County, adding a new county split. The District similarly reaches into Ulster County, targeting Democrat communities but circumventing areas with large numbers of Republican voters. The District stretches to pick up the Democratic-leaning city of Binghamton to the west. Finally, the District reaches up to encompass the Democratic city of Utica to the north. As a result of these targeted adjustment to the district lines, Congressional District 19 shifts from a Republican district to a Democrat-leaning district.

The new Congressional District 21 has no coherent explanation except for seeking partisan and incumbent protection advantage, including by reducing competitiveness. District 21 through “packs” Republican voters, adding Republican voters from large portions of Oneida County and Herkimer County, half of Montgomery County, and all of Schoharie County, increasing the concentration of Republican voters in the district and thus diminishing competitiveness in the surrounding districts.

The new Congressional District 22 has no coherent explanation except for seeking partisan and incumbent protection advantage, including by reducing competitiveness. The Legislature “cracked” Congressional District 22 by removing Republican areas and adding Tompkins County, including the heavily Democratic city of Ithaca. As a result, the new District 22 shifts from a competitive Republican district in the 2012 court-drawn map to a safe Democratic district in the new map.

The new Congressional District 23 has no coherent explanation except for seeking partisan and incumbent protection advantage, including by reducing competitiveness. The Legislature “packed” Republican voters into Congressional District 23. The new District 23 connects the suburbs of Buffalo and other towns in southern Erie County to distant rural areas around Binghamton. As a result, Congressional District 23 is now much less competitive and has become an overwhelmingly Republican district.

The new Congressional District 24 has no coherent explanation except for seeking partisan and incumbent protection advantage, including by reducing competitiveness. The Legislature similarly “packed” Republican voters into Congressional District 24. Previously, District 24 was

compact and encompassed related communities in Wayne, Cayuga, and Onondaga counties, as well as part of Oswego County. The new District stretches across four media markets, connecting numerous areas over more than 250 miles with little in common, extending all the way from Lewiston, in Niagara County eastward and northward into Jefferson County (all the way to the St. Lawrence County line), targeting Republican voters. As a result, Congressional District 24 is now overwhelmingly Republican.

VI. Analysis of the 2022 State Senate Map

My analysis of the 2022 state Senate map revealed a similar partisan design. Just as with the 2022 congressional districts, the state Senate map is drawn with the purpose of seeking partisan and incumbent protection advantage. The following examples illustrate the Legislature's intent to favor the Democratic party and protect Democratic incumbents and candidates, while disfavoring Republican incumbents or candidates and reducing competitiveness:

The new Senate Districts on Long Island have no coherent explanation except for seeking partisan and incumbent-protection advantage. Republican voters are "packed" into two districts, and the remaining seven districts are now much more favorable for Democratic candidates. Long Island's new Senate District 2 is overwhelmingly Republican, "packing" in Republican voters that were previously in Senate District 1. As a result, the new Senate District 1 is more favorable for a Democratic candidate than the 2012 legislature-enacted state Senate map. The Legislature similarly packed Senate District 4 with Republican voters, adding the Republican areas of Bayport, Oakdale, and east Islip, which were previously in state Senate District 3. In short, the Legislature combined the heavily Republican areas of Suffolk and Nassau counties into state Senate District 4.

Long Island's new state Senate Districts 5 and 6 have no coherent explanation except for seeking partisan and incumbent-protection advantage, including by reducing competitiveness. The Legislature reconfigured these former swing districts into strong Democratic districts by combining geographically distant and unrelated communities. In state Senate District 5, the Legislature removed the Town of Oyster Bay and added the Town of Babylon, picking up heavily Democratic communities to make the district more favorable to Democratic candidates. The Legislature placed Oyster Bay in new Senate District 6, adding Democratic strongholds in Uniondale and the Village of Hempstead to make District 6 a strong Democratic district.

The new state Senate Districts 7 and 9 have no coherent explanation except for seeking partisan and incumbent-protection advantage, including by reducing competitiveness. In the new Senate District 9, the Legislature removed the Five Towns, a conservative Orthodox Jewish community of interest, moving it to Senate District 10, a heavily Democratic district in Queens. The move adds a new county split along the Nassau-Queens border with no purpose except favoring of Democratic party and protecting Democratic incumbents and candidates, while disfavoring Republican incumbents and candidates.

The new state Senate District 22 has no coherent explanation except for seeking partisan and incumbent-protection advantage. Here, the Legislature redrew the district boundaries to remove portions of Republican communities in southern Brooklyn. The new District 22 also bizarrely extends into Democratic communities in northern Brooklyn. These new additions to District 22 have nothing in common with the remaining southern communities and neutralize their Republican votes. Further, the new district lines divide Brooklyn's Russian and Orthodox Jewish communities of interest between multiple state Senate districts.

The state Senate Districts north of New York City are similarly drawn with no purpose except favoring the Democratic party and protecting Democratic incumbents and candidates, while disfavoring Republican incumbents and candidates. The Legislature removed Republican communities in Dutchess County and politically competitive towns in Westchester County from what was Senate District 40 in the 2012 map to create a bizarrely shaped new Senate District 42. The new District 42 stretches in a thin finger to unite unrelated communities with no coherent explanation except for seeking partisan and incumbent protection advantage, combining the city of White Plains with rural and suburban areas in Putnam and Westchester counties. While District 40 in the 2012 map was competitive and consistently elected Republicans, the new District 42 is emphatically Democratic. This shift required the Legislature to split Putnam County between state Senate District 42 and state Senate District 41. Putnam County is now combined with Orange County, rather than with Dutchess County, with which it shares an established community of interest.

Further, the Legislature moved Philipstown in Putnam County and the communities of Beacon and Fishkill in Dutchess County from what was formerly Senate District 41 (located centrally in Dutchess and Putnam counties) to the new Senate District 41, which is primarily located in Orange County. Philipstown, Beacon, and Fishkill are Democratic-leaning

communities. By moving these communities to new District 41, the Legislature transformed the district from Republican to safely Democratic, with no coherent explanation except for seeking partisan and incumbent-protection advantage.

In order to accomplish this partisan-advantage-seeking shift in District 41, the Legislature moved the Republican-leaning towns of Montgomery, Crawford, Chester, and Monroe to the new Senate District 44. The Legislature drew the new state Senate District 44 with the purpose of disfavoring Republican incumbents and candidates and reducing competitiveness, by packing it with Republican voters from Orange, Delaware, and Broome counties, and removing Democratic-voting parts of Ulster County.

The Legislature also transformed the new state Senate District 48, which was previously Senate District 46, into a Democratic district from a Republican-leaning district with changes that have no coherent explanation except for seeking partisan and incumbent-protection advantage, including reducing competitiveness. The new Senate District 48 excludes the northern Republican-voting areas in Montgomery and Schenectady County, replacing them with Democratic-leaning areas in Ulster, Dutchess, and Columbia counties.

The Legislature drew the new state Senate District 46 with the purpose of favoring the Democratic party, while disfavoring Republican incumbents and candidates, by disconnecting the City of Albany and the Albany County river cities across the Hudson River to protect Democratic candidates and reduce competitiveness. The new District adds Republican areas in Saratoga County that have nothing in common with the rest of the District, creating a strong Democratic district.

The new state Senate District 51 is a large, central New York district. This new district is drawn to lump together two Senators, Republican James Tedisco of the 2012 Senate District 49 and Republican Peter Oberacker of the 2012 Senate District 51, into the same district. It appears highly likely that the Democratic leaders in the Legislature drew this district specifically to disfavor or remove one of these two incumbent Republican Senators.

The new state Senate District 52, which resembles state Senate District 50 in the 2012 Senate map, has no coherent explanation except for seeking partisan and incumbent-protection advantage. The Legislature transformed the district from a consistently Republican district to a Democratic district by adding more of the City of Syracuse to completely unrelated suburbs in Onondaga County.

The new state Senate District 53 has no coherent explanation except for seeking partisan and incumbent-protection advantage, including reducing competitiveness. Here, the Legislature created a strong Democratic district by combining Tompkins County with parts of Cortland, Tioga, and Broome counties, disconnecting communities in Tompkins County from surrounding areas with which they have historical connections.

The Legislature drew new state Senate District 54 with the purpose of reducing competitiveness. Here, the Legislature “packed” the district with Republican voters, adding Wayne County to other strongly Republican-performing areas in Genesee, Livingston, Ontario, and Cayuga counties. The new District 54 is overwhelmingly Republican and decreases competition in the surrounding districts.

The new state Senate Districts 56, 57, and 58 have no coherent explanation except favoring the Democratic party and protecting Democratic incumbents and candidates, while disfavoring Republican incumbents and candidates. In new state Senate District 56, which resembles Senate District 55 in the 2012 map, the Legislature added a large portion of the heavily Democratic City of Rochester, creating a safe Democratic district and reducing competitiveness. Similarly, the Legislature increased Democratic candidate protection in the new state Senate District 57, which also incorporates a substantial portion of the Democratic City of Rochester. In new state Senate District 58, the Legislature increased the number of Republican voters, neutralizing their voting power by removing them from surrounding districts and decreasing competitiveness in the other districts while enabling the Legislature to create the new Democratic district in Tompkins and Broome counties.

The Legislature drew the new state Senate District 60 with the purpose of favoring of Democratic party, while disfavoring Republican incumbents and candidates. The Legislature reduced competitiveness in the District by splitting the Erie-Niagara County border and adding the City of Niagara Falls. The Legislature also removed the towns of Orchard Park, Evans, and Brant from new District 60. District 60 in the 2012 map was a competitive swing district, but the Legislature transformed the District into a strong Democratic district by reaching into a new county and adding Niagara Falls. The Legislature achieved this by removing Niagara Falls from new state Senate District 62, which is now packed with Republicans due to the addition of reliably Republican towns to the east, which thereby removes all competition.

The Legislature also drew Senate District 63 with the purpose of favoring the Democratic party, while disfavoring Republican incumbents and candidates. Here, the Legislature reduced competitiveness in the District by combining several geographically distant and unrelated areas: the suburban swing Town of Amherst, the east side of Buffalo, and part of Lackawanna County. As a result, new state Senate District 63 is overwhelmingly Democratic, with no real risk of the Democrats losing that Senate seat.



CLAUDE A. LAVIGNA

Dated: 6021062022, New York

February 14, 2022

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Exhibit 1

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Congressional Districts

Upstate New York

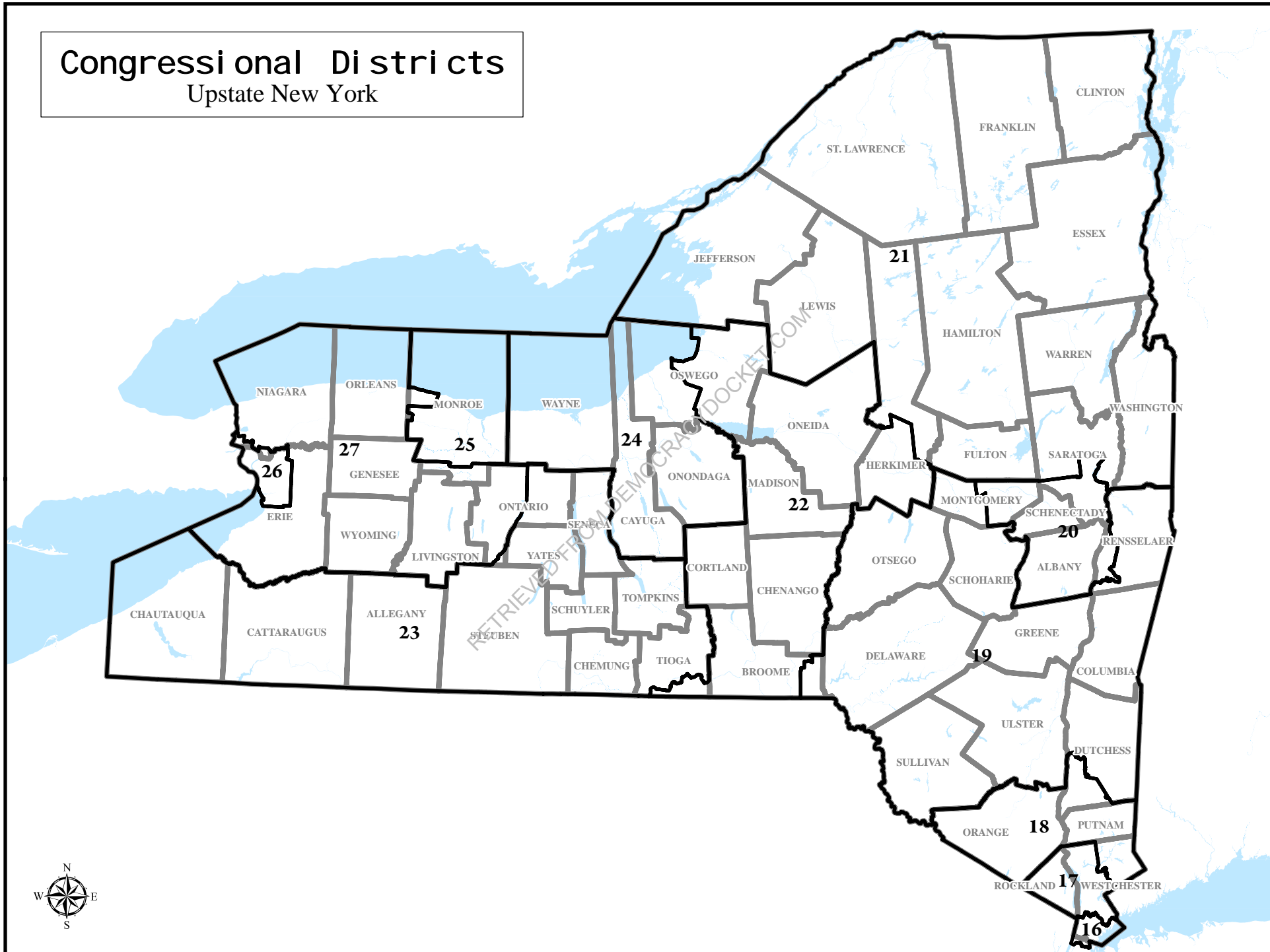


Exhibit 2

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Senate Districts

Upstate New York

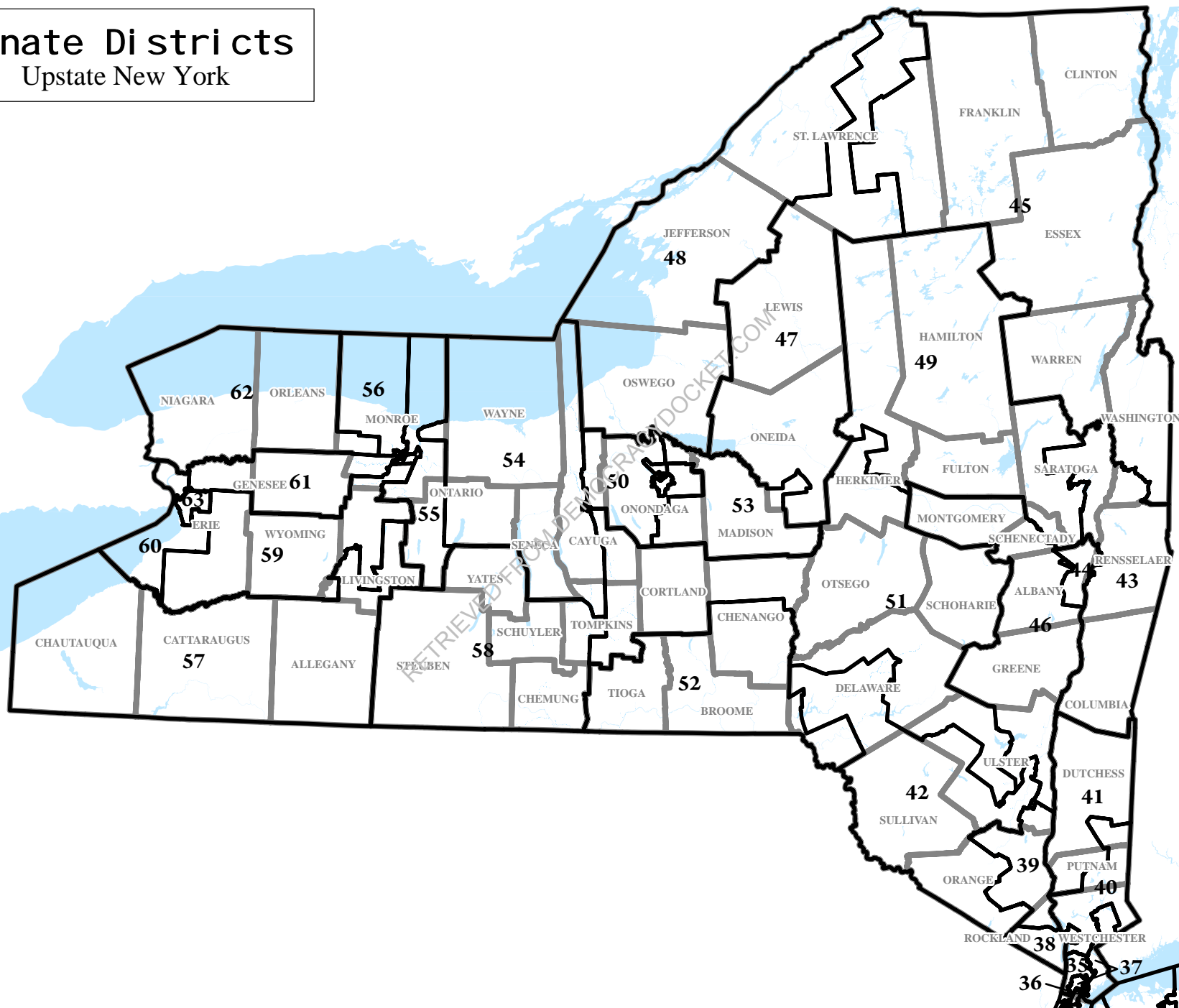


Exhibit 3

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Congressional Districts

Upstate New York

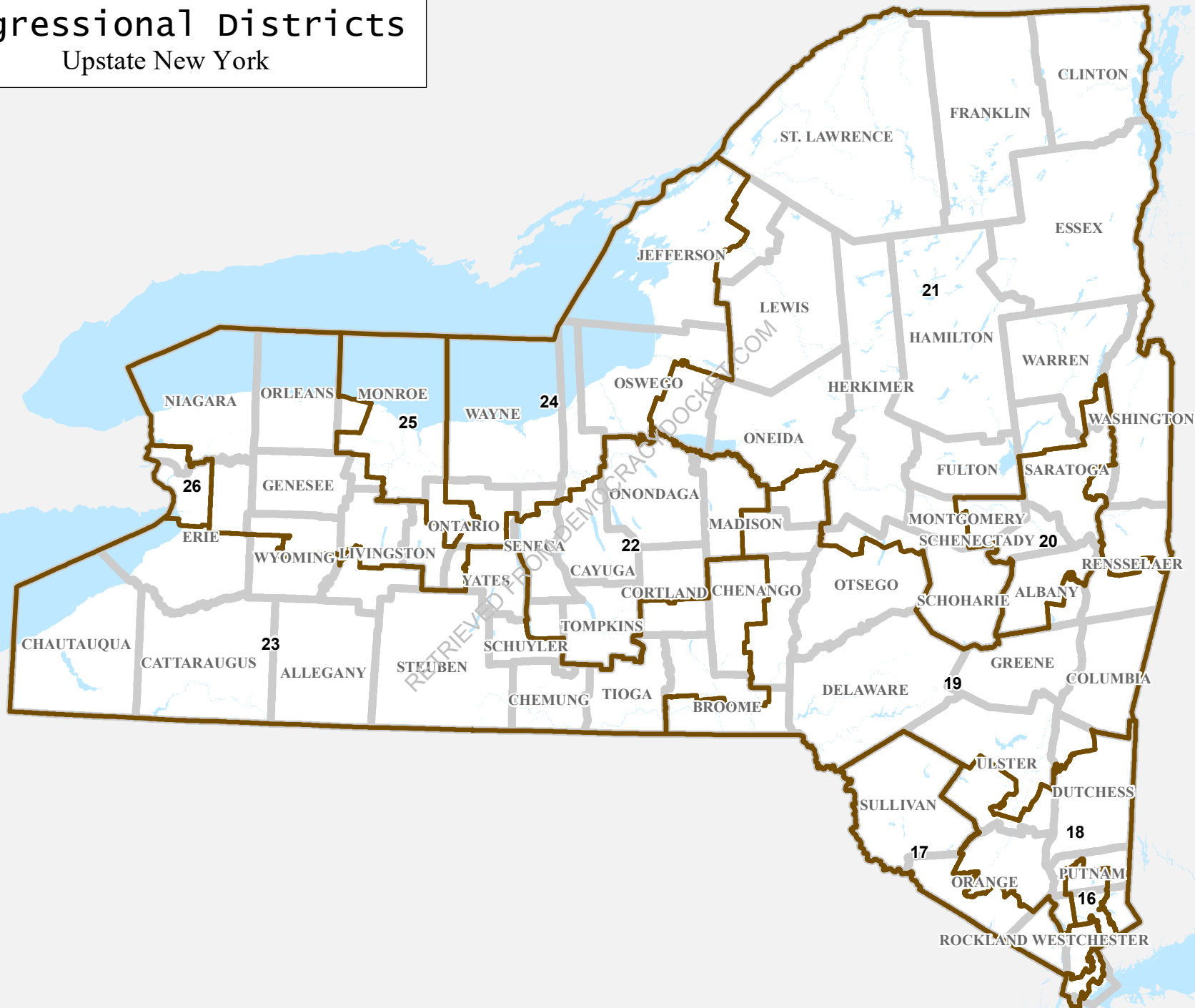


Exhibit 4

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State Districts

Upstate New York

This map displays the 62 state districts of Upstate New York, each identified by a number. The districts are outlined in brown, while county boundaries are shown in gray. The map includes labels for all 62 counties: Albany, Allegany, Broome, Cayuga, Chemung, Cortland, Delaware, Dutchess, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Otsego, Rensselaer, Saratoga, Schoharie, Sullivan, Ulster, Warren, Washington, Westchester, and Yates. The districts are numbered as follows: 37 (Albany), 38 (Albany), 39 (Albany), 40 (Rockland), 41 (Orange), 42 (Putnam), 43 (Columbia), 44 (Sullivan), 45 (Rensselaer), 46 (Saratoga), 47 (Warren), 48 (Greene), 49 (Oneida), 50 (St. Lawrence), 51 (Schoharie), 52 (Onondaga), 53 (Tompkins), 54 (Wayne), 55 (Madison), 56 (Monroe), 57 (Livingston), 58 (Cattaraugus), 59 (Schuylar), 60 (Erie), 61 (Erie), 62 (Niagara). The map also shows the Great Lakes to the west and north, and the Hudson River to the east.



Exhibit 5

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Claude A. LaVigna

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Slingerlands, NY 12159

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EXECUTIVE SUMMARY

A national pollster who has conducted survey research for leading elected officials, corporations and public affairs initiatives for nearly 30 years. He provides strategic guidance and knows how to work with clients to effectively persuade an electorate and sway public opinion. He also has a deep understanding and respect for how to integrate the grassroots, news media and other outside influencers into a political or corporate campaign.

PROFESSIONAL EXPERIENCE

May 2021 to Present

Vice President, Research and Analytics. Co/efficient, Kansas City, MO.
Co/efficient is a leading, nationwide survey research and analytics firm specializing in political, non-profit and corporate campaigns.

January 2014 to Present

Director. Balance New York.
Balance New York is an independent expenditure committee established in November 2013 and was responsible for executing successful efforts to keep the Republican Majority in the State Senate over the past two election cycles. Responsibilities included working with compliance counsel, filing all New York State Board of Elections periodic reports and developing and coordinating messaging between print, media and digital vendors.

May 2008 to Present

Owner and President. Eagle Point Strategies, Albany, NY
Eagle Point Strategies is a full service New York based public opinion survey and market research company, specializing in issue advocacy campaigns and candidates running for public office at all levels of government.

February 1989 – May 2008

Deputy Director. New York State Senate Republican Campaign Committee, Albany, NY
Database - Responsible for building first PC based standardized statewide voter data file. Oversaw 40 terminal volunteer phone bank. Produced targeted walk and

phone lists for all State Senate campaigns. Spearheaded direct mail fund raising campaigns. Survey Research - Conducted over 500 surveys for State Senate campaigns. Designed questionnaires, drew stratified random samples from voter file, and produced cross-tabulation results. Office Operations - Supervised staff of up to 10 people including setting office and campaign prioritization in a fast paced and ever changing environment.

January 1988 - January 1989

Production Manager. New York State Senate Republican Campaign Committee, Albany, NY

Coordinated and managed all campaign mailings on behalf of State Senate candidates and Senators. Served as the liaison between campaign field staff and central production facility. Managed over 7 million pieces of mail throughout New York State.

June 1985 - December 1987

Legislative Assistant. Civil Service Employees Association, Albany, NY
Legislative responsibilities included issue research, tracking legislation in the State Senate and State Assembly and assisting with the union's contracted lobbyist. Political Action responsibilities included union member political action training throughout New York State, developing comprehensive organizing plans for regular lobby days for union members coming to Albany. Campaign activities involved directly working on political campaigns throughout New York State on CSEA endorsed candidates. These activities included managing phone bank operations, door to door canvassing efforts and other direct voter contact.

EDUCATION

September 1977 - June 1981 Harrison High School, Harrison, New York

September 1981 - June 1983 Ohio University, Athens, Ohio

September 1983 - May 1985 State University of New York at Albany
B.A.- Communication

RELEVANT SKILLS

Professional Associations: American Association of Public Opinion Research (AAPOR)

REFERENCES

Available upon request