

# Whither Board of Estimate?

By  
**HON. SHELDON S.  
LEFFLER\***

and

**COREY B.  
BEARAK\*\***

*(On October 5, 1984, the parties to the litigation challenging the structure of the New York City Board of Estimate submitted a joint stipulation listing those agreed valid policies and interests, as well as those disputed policies and interest, which are served by the board. City Councilman Sheldon S. Leffler and his counsel and chief of staff, Corey B. Bearak, in the following article, explain why citizens are challenging the Board's current structure and discuss some of the potential solutions.)*

The Board of Estimate is one of New York City's governing bodies and consists of eight members who—importantly-- are a mixture of at-large(city-wide) and district (borough) representatives. The Mayor, the City Council President and the Comptroller each possess two votes and are elected by the electorate as a whole. The Borough Presidents, having one vote each, are chosen by their respective borough constituencies.

By virtue of its control over City expenditures, franchises, contracts, property and zoning, the Board often has a far greater impact on local communities than the City Council. Thus, current litigation that seeks to either abolish or alter the structure of the

Board could have a great impact on the governance of the City of New York.

The Board's present structure dates back to 1901, three years after the boroughs were consolidated into the City of New York, and at a time when each borough maintained a powerful government headed by a Borough President. As the City grew, neighborhoods replaced boroughs as the point of local political interests. By 1963, borough governments were eliminated altogether. Nonetheless, Borough Presidents remained on the Board of Estimate, wielding the vote as their principal power.

Let's Look at the population of each borough and the average deviation in their population (based on the 1980 census):

<i>Borough</i>	<i>Population</i>	<i>Deviation</i>
Brooklyn	2,230,936	-57.7%
Queens	1,891,325	-33.7%
Manhattan	1,427,533	-0.9%
Bronx	1,169,115	+14.4%
Staten Island	352,121	+75.2%

Note that Brooklyn, the largest borough, has six times the population of Staten Island, the smallest borough.

That difference in population but equivalence in franchise is the primary basis for charges that the Board's legislative design violates the one-man, one-vote provision. The current litigation over the Board of Estimate has presented no allegation of racial discrimination by the present scheme.

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\*Council Member, 16<sup>th</sup> District, Queens

\*\* Councilman Leffler's counsel and chief of staff; also serves as an Associate Editor of the Bulletin.

The present variations in population between Brooklyn and Staten Island, 132.9% are greater than the maximum that is permitted under the Supreme Court's *Brown v. Thomson*, 462 U.S. 835 (1983) decision, which concluded that the deviation between the largest and the smallest districts should be no more than 10%. In two cases where the Supreme Court approved deviations greater than 10%, it did so by exception. In *Abate v. Mundt*, 403 U.S. 182 (1971), the exemption was 11.9%. In *Mahan v. Howell*, 410 U.S. 315 (1978) the deviation was 16.4%.

In December, 1981, three Brooklyn residents, Beverly Morris, Joy Clarke Holmes and Joanne Oplustil, filed suit charging that the New York City Board of Estimate deprived them of equal protection under the 14<sup>th</sup> Amendment to the Constitution. They maintain that Sections 61 and 62 of the City Charter, outlining the Board's legislative plan, devalued their ballots by violating the one-person, one-vote rule.

In December, 1982, the Federal District Court in Brooklyn decided that the Board of Estimate was not subject to that constitutional principle. (*Morris v. Bd. of Estimate*, 551 F. Supp. 852 [E.D.N.Y., 1982]). In May, 1983, the Second Circuit Court of Appeals reversed the lower court's ruling, concluding: “[T]hat the Board of Estimate is selected by popular election and performs general governmental functions. The principle of one person, one vote is therefore applicable.” (*Morris v. Bd. of Estimate*, 707 F. 2d 686 [2<sup>nd</sup> Cir., 1983]).

The Second Circuit remanded the case to the District Court to determine the degree of malapportionment present and rule on the policies and interests which the Supreme Court has held may justify deviations from the literal one-person, one vote formula.

The City argued that the presence of City-wide elected officials—the Mayor, City Council President and Comptroller—negated the standard test described earlier. In fact, courts faced with mixed designs have simply excluded the at-large positions from the malapportionment mathematics. Indeed, the Supreme Court has followed this same line in *Avery v. Midland County*, 390 U.S. 474 (1968), where is noted the vast imbalance among the court single member districts without discussing the one at large representative's impact.

Judge Edward Neaher's August 21, 1984 decision, (*Morris v. Bd. Of Estimate*, 592 F.Supp. 1462 [E.D.N.Y., 1984], 81-CV3920), directed the parties to begin conferring by September 14, 1984 to produce a joint stipulation for submission no later than October 5, 1984 listing with conciseness and specificity:

1. Those agreed valid policies and interests presently served by the Board; and
2. Those disputed policies and interests which at least one [Board of Estimate member] maintains are valid and are presently served by the Board. For each such disputed consideration, plaintiffs are expected to explain the basis of their objection.

After reviewing that joint stipulation, Judge Neaher scheduled a conference with the parties and discussed the subsequent procedure for bringing the litigation to an expeditious and equitable end.

### **SOME SOLUTIONS**

If a weighted system of voting is introduced, instead of the current six to five split between city-wide and borough officials, the city officials would count for three times

the total of the Borough Presidents. The bolstered at-large (city-wide) presence would so overwhelm the borough delegations that population inequalities among the boroughs are not even roughly translated into any major disparities. In such a case, any two citywide officials can dominate the business of the Board, with the assistance from any one borough representative. Under the Board's present scheme, any two city-wide officials would be required at least two Borough President votes to control. The Court found this form of weighted voting muted the discrepancy between the boroughs. However, it did not prove feasible to implement a weighted voting system to preserve New York City Council Members-at-large. Also, Staten Island residents now speak of seeking to secede rather than accept a weighted voting system.

Richard Emery, a New York Civic Liberties Union Attorney, who is representing the plaintiffs in this case, would scrap the unevenly populated boroughs as districts and base new districts on the population of Staten Island. The City would be divided into nineteen districts of about 360,000. Brooklyn would have six districts; Queens, 5; Manhattan, 4; Bronx, 3; and Staten Island, 1. The City-wide officials would maintain their present dominance by commanding seven votes each, 21 in all, as compared to 19 for the district representatives.

Mr. Emery believes that fairly drawn districts would not be a disaster for Staten Island because that district could form alliances across borough borders with other

middle class areas, thereby protecting its important local interests.

Such an upper house approach for city government of 22 members, Mr. Emery believes, is small enough to operate efficiently but large enough to eliminate the backroom politics of the present Board.

We doubt that New Yorkers would want a solution that means adding 14 more politicians and any solution would have to pass by referendum.

Another solution, which we favor, is to shift budgetary powers from the Board of Estimate to the City Council. All non-routine contracts, zoning, and franchise matters could be shifted, too. This shift would abolish the Board's legislative power and the "one-person, one vote," principle applies to legislatures.

Even this solution has some disadvantages. For example, the Borough President of Queens has helped focus the Queens City Council delegation on capital and expense budget priorities which benefit the Borough as a whole.

The issues are complex: How best to represent the needs and interests and rights of New Yorkers. Perhaps the product of the conferences between the parties may shed some light on a path for solution, if not present a solution itself.

*Ed. Note:*

As of date of publication, this matter is still pending before Judge Neaher.

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