

TESTIMONY BY
THE NEW JERSEY LEGISLATIVE REDISTRICTING COALITION
BEFORE THE NEW JERSEY STATE APPORTIONMENT COMMISSION

DELIVERED AND SUBMITTED BY:

Roberto Frugone, Co-Chairman, 973.945.5532
rfrugone@gmail.com

Jerry Harris, Co-Chairman, 609.519.6637
harrisj@hotmail.com

New Jersey Legislative Redistricting Coalition
P.O. Box 386
Plainfield, New Jersey 07060
Phone: 973.945.5532

Buenos dias and good morning distinguished members of the New Jersey State Apportionment Commission. I am Roberto Frugone, founder of La Causa of NJ, board member of the Latino Action Network and here today in my capacity as Co-Chairman of the New Jersey Legislative Redistricting Coalition. We thank you for the opportunity to speak on this very important issue.

The New Jersey Legislative Redistricting Commission (the "NJLRC") is a broad collection of community-based, civil rights, human rights, advocacy, and legal organizations, who have come together to promote and participate in a non-biased and non-partisan approach towards the New Jersey Legislative redistricting process. In short, we believe that the residents of New Jersey have a right to receive a fair and constitutional map, and that this right must trump the theatre of partisan gamesmanship.

We also want to ensure that the final map of New Jersey's State Senate and Assembly Districts ("2011 Legislative Map") provides New Jersey's communities of color (e.g., African-Americans, Asians and Hispanics) with equal opportunities to participate in the political process, including the ability to elect representatives of their choice. Since 2000, the African-American, Asian and Hispanic populations in New Jersey have been among the fastest growing populations in the State. While New Jersey's White (non-Hispanic) population has decreased from 66% of the population in 2000 to 61% of the population, the African-American population has increased from 13.6% to 14.5%, the Asian population from 5.7% to 7.8% and the Hispanic population from 13.3% to 16.7%. The 2011 Legislative Map must reflect these population trends as well as maximize the voting strength of racial and ethnic minorities to the fullest extent permitted by law.

To achieve this purpose, the Commission must immediately address its governance and properly apply the traditional districting principles consistent with federal and state law.

I. Governance

For context, New Jersey is one of only 13 states which charge a bi-partisan commission with the redistricting process. The others include Alaska, Arizona, California, Colorado, Hawaii, Idaho, Missouri, Montana, Pennsylvania and Washington. In the majority of States, the redistricting process is handled by the legislature and in the vast majority of these States the Governor has the ability to veto the redistricting plan. Still, the redistricting and reapportionment process goes to the heart of the most fundamental democratic principle of self-governance. It, therefore, remains our hope that, at some point, the New Jersey Constitution will be amended to place even more emphasis and power in the hands of the people during the redistricting process. In this regard, we agree with the observations provided by the Brennan Center For Justice, during its testimony before the Illinois Senate Redistricting Committee on October 13, 2009. Speaking on behalf of the Brennan Center, Justin Levitt stated:

The process of drawing legislative lines affects the interests of individual legislators, the interests of political parties, and the interests of represented communities - or, put differently, the public good. When legislators personally are able to set the lines by which they are elected, there arises a natural temptation to conflate the three, even when those officials act with the purest of motives. That is, even conscientious elected representatives might be tempted to draw electoral lines that insulate their districts from effective challenge and promote their party's fortunes - because they believe themselves and their party best able to serve their constituents.

Such temptations - whether fueled by self-interest or zealous advocacy - weaken the democratic process and blunt the voice of the electorate. By drawing district lines to promote individual and party security, legislators with a hand in the process become enmeshed in the task of building districts based on favored constituents and disfavored ones. That is, representatives get into the business of choosing their constituents, rather than the other way around.

Turning more specifically to the issue of governance, we urge the Commission to be guided by the principles of transparency and inclusion. Transparency and inclusion are inextricably linked with accountability. When information is withheld from people or decisions are made in the dark corners of smoke-filled rooms, people lose both their ability to assess the performance of their representatives (and react accordingly) and their confidence in the system.

We, therefore, urge the Commission to ensure transparency in this process by adopting each of the following proposals:

1. **Pre-map Hearings**: The Commission should immediately agree upon and publish at least six public hearing dates during the month of February after the census information is certified by Governor Christie. These dates should be published no later than February 7, 2011, and two should be held in the North, Central and Southern geographic regions of our State, respectively, in cities that represent our residents in both urban and suburban communities.

January 29, 2011: Testimony by The New Jersey Legislative Redistricting Coalition

2. **Post-map Hearings**: The Commission also should host at least 3 public hearings (again, in the State's North, Central and South geographic regions) after the Commission has reached a majority decision on a proposed map, but before the proposed map is certified to the Secretary of State. Allowing public hearings after the proposed map is drawn will provide a meaningful opportunity for public input and participation. In the absence of post-map hearings, the public will be forced into either remaining silent or incurring the cost of litigation to address its concerns. These options are inconsistent with an open, fair and democratic process.
3. **Transcripts**: The Commission should permit both transcripts and recordings for all public hearings both before and after the Commission proposes its map. These transcripts and recordings should be available online promptly after each hearing. Like the hearings themselves, publically accessible transcripts and recordings of the hearings will provide a meaningful opportunity for thoughtful public input and participation.

We recognize that time is of the essence and that the Commission must complete its work by April 1, 2011 in order to meet the April 7th deadline for the 2011 Primary election process. Historically, each 10-member bi-partisan Commission has been stalemated on its initial attempt to agree upon a map. In light of the political posturing that already has occurred on both sides of the Commission's aisle, the public has every reason to believe that this 10-member Commission will follow suit with its predecessors. As previously noted, Article IV Section III of the New Jersey State Constitution states, if the 10-member bi-partisan Commission "determines that it is unable to" agree upon a map, it must certify as much to Chief Justice Stuart Rabner, who must appoint an independent 11th member. We urge the Commission to make this determination expeditiously, so that Chief Justice Stuart Rabner may appoint the independent 11th member. Among other things, appointing the independent 11th member early will allow him or her to participate in the public hearings and to hear directly from the residents of New Jersey.

Additionally, to accommodate the additional hearings we have proposed, we ask the Commission to follow suit with its 2001 predecessor and request that the Legislature extend the filing deadline for the 2011 Primary elections. Acting in advance and adopting our governance proposals for pre- and post-map hearings, transcripts and an early appointment of the Independent Commissioner, will help to ensure transparency, accountability and efficiency in the redistricting process.

II. Guiding Principles

With respect to the principles which must guide the work of this Commission, we want to be clear. Section 2 of the Voting Rights Act of 1965 prohibits "minority vote dilution." Minority vote dilution occurs in situations where minority voters have been denied opportunities to elect candidates of their choice because the majority voters vote in a block that effectively locks minority-preferred candidates out of the process. The ability for minority voters to elect candidates of choice can be found in several types of districts which can be described as effective minority opportunity districts:

- **Majority-minority districts:** Majority-minority districts are districts where the minority voting age population is more than 50 percent of the districts' voting age population.
- **Cross-over districts:** Crossover districts are referred to as districts where the minority voting age population make up less than a majority of the voting age population in a district but is large enough to elect their representative of choice with the help of a small number of majority voters who cross over to support the minority voters' representative of choice.
- **Coalition districts:** Coalition districts are comprised of at least two minority groups who form a coalition to make up a majority of a district who vote cohesively to elect the candidate of the coalition's choice. Creating minority coalition districts may provide greater opportunities for minority voters to elect representatives of choice.

Although, cross-over and coalition districts have been used interchangeably there are important differences and these districts should not be confused with "influence districts." Influence districts are districts where a significant number of minority voters are included in a district but they are provided no opportunity to elect candidates of choice. Influence districts "are not and should not be seen as a substitute for effective minority opportunity districts."

Additionally, we do not read the recent U.S. Supreme Court's decision in *Bartlett vs. Strickland*, 129 S.Ct.1231 (2009), to vitiate the ability of the Commission to draw coalition or crossover districts where the minority group is less than 50 percent. Although, the *Bartlett* Court held that the creation of crossover districts is not required under *Bartlett* when a single minority group is not the majority in the district, *Bartlett* does not prohibit the redistricting body from creating crossover or coalition districts that provide minority voters with an opportunity to elect candidates of choice. In fact, the *Bartlett* Court recognized that, "racial discrimination and racially polarized voting are not ancient history. Much remains to be done to ensure that citizens of all races have an equal opportunity to share and participate in our democratic process and traditions." Therefore, the commission must ensure that it's proposed map adhere to the traditional redistricting principles required by the New Jersey Constitution:

1. **Equal Opportunity:** Districts will be drawn that maximize the voting strength of racial and ethnic minorities to the full extent permitted by law. We will challenge any map that proposes districts which deny or abridge the equal opportunity of racial and ethnic minorities to participate in the political process, or to elect representatives of their choice. Here, the courts are clear: The seminal test under the law is whether the Commission's proposed map will have the effect of diluting minority voting strength, not whether it was enacted with the intent to discriminate against racial and ethnic minorities.
2. **Contiguity and Reasonable Compactness:** Districts will be drawn that respect political boundaries and preserve communities of interest (i.e., communities

concentrated within a geographic area that share ethnic, cultural, social, economic, religious and/or political interests). The Commission should understand, however, that we will oppose any attempt to construct bizarrely shaped districts which so concentrate racial or ethnic minorities that they create so-called “super majority minority” districts. As former U.S. Supreme Court Justice Sandra Day O’Conner has said,

A reapportionment plan that includes in one district individuals who belong to the same race, but who are otherwise widely separated by geographical and political boundaries, and who may have little in common with one another...bears an uncomfortable resemblance to political apartheid.

Our view is that the creation of “super majority minority districts” (or “packing”) effectively wastes the minority vote and violates both the Equal Protection Clause of the 14th Amendment and Section 2 of the 1965 Voting Rights Act. In this regard, we will watch very carefully the Commission’s deliberations with respect to Newark and Jersey City, both of whom have large minority populations that have historically exceeded the mean. We particularly want to avoid situations, like the 28th Legislative district, which extends from Newark to Nutley, which is further than driving from South Orange to Summit.

3. **Recognize The Facts:** The Commission must recognize the fact that New Jersey, like the rest of the United States, is becoming more diverse. Indeed, New Jersey’s African-American, Asian and Hispanic population appears to be growing faster than the national average. The Commission’s proposed map must contain districts that anticipate and incorporate these population trends. We are increasingly concerned when we hear of efforts to dilute the voting strength of Urban districts – where large communities of color reside -- to support the growth in suburban districts. These arguments will be tested vigorously to ensure that they respect the overall population growth of New Jersey’s communities of color and that they survive the legal crucibles we have described. To be clear, a map that reduces the existing opportunities for minorities to be represented in the State Legislature is unacceptable. Indeed, it is our view that, in light of the population trends, the proposed map must increase the number of majority minority districts and must result in an increase in the opportunities for racial or ethnic minorities to serve as representatives in the New Jersey Senate and Assembly – whether or not they live in majority minority districts. We believe that both the facts and the legal framework require this Commission to draw a map that results in a Legislature that reflects the diversity that is a reality in this State.

In closing, it has been said that the redistricting and reapportionment process is “more important than election day.” The Commission must remember that the federal and state laws which protect racial and ethnic minorities exist for a reason – to combat the historical vote dilution African American, Asian and Hispanic voters have faced in this Country and in this State. For communities of color, who have historically been locked out both politically and economically, our participation in this process is also the culmination of centuries of sacrifice and struggle. History created the need for

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protection. The Commission has the obligation to ensure protection occurs in fact, and that democracy's ultimate promise of one person one vote is fulfilled.

I will make one final comment but do so in Spanish.

*Este comité tiene una gran responsabilidad – crear un mapa de distritos que permite mas oportunidad para que la composición de la legislatura refleje las diversa de la gente quien sirve. Por ejemplo, no mas vamos a aceptar que la comunidad Latina, que forma casi 17 por ciento de la población en el estado tenga solamente una senadora estatal. Durante este proceso estaremos atentos y participando. Entiendan, con un 17 por ciento somos parte de la tela que es New Jersey. Ahora es tiempo que el poder de nuestra voz iguale el poder en nuestros números.

Thank you, again, for this opportunity. The NJLRC would be glad to provide additional information or analysis to the Commission at you request. We look forward to accompanying you through this important effort.

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(* Spanish portion reads: This committee has a great responsibility – create a map of districts that allows more opportunity for the composition of the legislature to reflect the diversity of the people it serves. For example, we will no longer allow the Latino community, which forms almost 17% of the population in the state to have only one state senator. During this process we will be attentive and actively participate. Understand, at 17% we form part of the fabric that is New Jersey. Now it is time the strength of our voice equals our strength in numbers.)



LATINO ACTION NETWORK

TESTIMONY BY
THE LATINO ACTION NETWORK
BEFORE THE NEW JERSEY STATE APPORTIONMENT COMMISSION

DELIVERED AND SUBMITTED BY:

Frank Argote-Freyre, President
Latino Action Network
P.O. Box 943
Freehold, NJ 07728
Phone: 908-670-0552
frankfreyre@yahoo.com

Good morning distinguished members of the New Jersey State Apportionment Commission. I am Frank Argote-Freyre, President of the Latino Action Network. The LAN thanks you for this opportunity to speak on this very important issue.

The Latino Action Network [LAN] is a broad, statewide coalition of Latino organizations dedicated to political empowerment, the promotion of civil rights, and the elimination of disparities in the areas of education, health, and employment. To that end, we want to ensure that the Latino community is fairly represented in whatever legislative map is developed. Our numbers are growing and we expect that our representation will follow the same upward trajectory.



New Jersey's Latino population has grown significantly since 2000 – from 13.3 percent, to, according to the latest available data, 16.7 percent.

It is important to note that there has been some small improvement over the years in the level of Latino representation. In the 1990s, there were between two and four Latino state legislators, while today the number stands at seven. Only one member of the State Senate is Latino – Senator Teresa Ruiz. This is glacial progress when our numbers demand a fast lane to political empowerment. If representation were determined by a pure analysis of the numbers we should have 13 Assembly members and seven State Senators. This will give you a quick snapshot of the level of under-representation of our community.

Of course we realize there are many factors that go into creating an equitable legislative map and we are not oblivious to the subtleties and nuances of crafting legislative districts that are reasonable and



fair. The Latino Action Network's goal in this process is to remedy past inequalities and increase representation. We measure that both in the number of Latinos in the Legislature and in the overall responsiveness of legislators of all races and ethnicities to the issues facing the Latino community in New Jersey today.

The different choices and problems with packing

We have three possible paths ahead: a map that reduces representation of the Latino community, a map that maintains the status quo, and a map that increases representation. From our perspective, only one of those paths is acceptable.

What we are most concerned about is a map that reduces Latino representation or keeps it at current levels by employing the anti-democratic technique of “packing.” Packing is about segregation. This happens when Latino voters are packed into districts in such high numbers that their votes are diluted throughout



the rest of the state. This results in the “bleaching” of other districts so that Latinos have no influence there. It mutes and minimizes the votes and concerns of Latinos across New Jersey.

If there are only a few districts in the state with substantial blocs of Latino voters, then most legislators who are not Latino will have no reason to pay any attention to issues of concern to the Latino community. This kind of segregation raises concerns under the federal Voting Rights Act. It is discriminatory to take multiple existing districts where Latinos have substantial power and redraw them into one district where Latinos have almost all the power and other districts where Latinos are powerless.

Unlike in many other states, candidates in New Jersey usually run as a full slate for Senate and Assembly and balance who is on that slate to appeal to different interests in the district. Even if a district were 60% Latino, all three candidates on a slate would not necessarily be Latino. In contrast, in other districts where Latino population went



down as a result of packing, it becomes much less likely that any member of the ticket will be Latino or that any member of the slate would respond to Latino interests.

So packing – segregation -- in another word - is not the answer to increasing Latino representation. It is, in fact, a way of decreasing Latino representation. And given that our numbers have grown significantly, that is unacceptable and contrary to the Voting Rights Act. But we don't want the status quo either. We want to increase the representation of Latinos both through Latino representatives and legislators of all backgrounds responsive to the Latino community.

How do we do that?

A different path

We propose a different path.

First, we want districts in which the Latino population is significant - significant enough to make it likely that Latinos will have at least one member on a three-member slate, and significant enough to mean that all of the elected representatives of those



districts have to listen to the Latino community. As best as possible, we want the Latino population distributed in sufficient numbers to have influence in as many districts as possible.

Second, in parts of the state in which there is a smaller Latino population, we oppose "cracking" - the process of diluting Latino voices by separating small populations into different districts. Instead, we want to make sure that Latino communities are kept intact to both allow popular Latino candidates with appeal outside the community to win and to require all legislators from those districts to be attentive to Latino issues.

Both packing and cracking can be used to minimize the Latino vote and are anti-democratic.

Third, the composition of the rest of the map matters. We are not just looking at Latino districts. We are opposed to packing of any racial group, because we believe that "bleached" districts are harmful to the interests of all people of color. And we support the concept of one person, one vote, because manipulation of that standard to count



certain groups more than others ends up harming the Latino community. This could happen by packing a district to ensure that 60 or 70 percent is Latino or by cracking it by taking a significant group of Latinos that make up 10 to 20 percent of a region and dividing them into numerous legislative districts.

Exactly how to follow the path to greater inclusion will become clearer in the next week or so when the final Census data is released. However, there are opportunities in many parts of the state to strengthen Latino representation and we need to move aggressively in that direction. We look forward to working with this Commission as it moves forward and as additional demographic data becomes available.

Testimony of Micah Khan
Director of the Nehemiah Group
Before the
Apportionment Commission of New Jersey
January 29, 2011

Thank you, members of the Committee for holding this hearing here today. My name is Micah Khan Director of the Nehemiah Group which offers mentoring, housing, and employment services to formerly incarcerated individuals. I am also representing as a core member of the of the Integrated Justice Alliance, a solution-oriented collective of informed, cross-sector change agents who advocate for effective public policies before, during, and after incarceration in New Jersey.

I want to draw your attention to an often overlooked quirk in the Census data that counts prisoners as if they were residents of the prison rather than at their home addresses. When this data is used for redistricting purposes, it skews population distributions in New Jersey. Thanks to the state's smart policies and practices around parole, drug court, and the regional assessment centers, the New Jersey prison population dropped over the past decade. However, the problems associated with prison-based gerrymandering remain.

Each decade, New Jersey and its counties redraw their legislative districts on the basis of population to ensure that each district contains the same population as other districts. In this way, all residents are given the same access to government, fulfilling the Supreme Court's "One Person One Vote" rule.

At the Alliance, we take the position that the central value we should consider in redistricting is the one of fairness. However, unless the state takes action to correct a flaw in the Census Bureau's data, New Jersey's effort to draw fair districts will fail.

The Census Bureau counts incarcerated people as residents of the prison location, even though they cannot vote and are often not a part of the community that surrounds the prison. Assigning incarcerated people to the census block that contains the prison, rather than the census block that contains their home address, results in a significant enhancement of the weight of a vote cast in districts with prisons and dilutes the votes of all other residents in all other districts in the state.

The state is not powerless. Our neighbors of Maryland,¹ New York² and Delaware,³ have all passed legislation last year to adjust Census data for redistricting purposes. New Jersey should join them in

¹ HB496 and SB400, 2010 Leg., Reg. Sess. (Md. 2010).

² Part XX of A9710D/S6610C with technical amendment as A11597/S8415, 2010 Leg., Spec. Sess. (N.Y. 2010).

³ HB384, 145th Gen. Assem., Reg. Sess. (Del. 2010).

giving each resident equal access to government, where political power is based on the actual number of residents, not the presence of a prison in the district. New Jersey itself has already taken a step in this direction. New Jersey law requires school board districts to exclude the prison population when apportioning school boards that have 9 or more members.⁴ I brought with me, and attached to the written testimony submission a fact sheet about how states are authorized to adjust Census data when redistricting, and that many already do.⁵

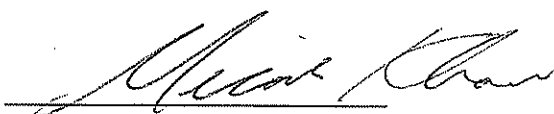
I understand that New Jersey has one of the fastest timelines for redistricting in the nation and that limits the options. Ideally, New Jersey would have passed legislation like that in Maryland, Delaware and New York last year. I expect there is not time to work with the Department of Corrections, determine home addresses and adjust the Census Bureau's data to reflect people at their home addresses.

But there are interim solutions. First, you could declare all people counted as residents of the correctional facilities to have been counted there incorrectly. As you do not know their correct addresses, you could instead declare their addresses unknown and treat them as at-large members of the state and not in any particular district.

Alternatively, you could take the prison populations in to account when drawing districts. You can make efforts to not put multiple large prisons in the same district, and you could take the prison populations in to account when analyzing and reporting population deviations. In particular, the problematic practice seen in some states of under-populating districts that are also padded with prison populations should be avoided.

Again, we understand that you have a very compressed timeline for redistricting and that you will have completed your efforts before the Census Bureau publishes the group quarters counts. However, we stand prepared to work with you to identify which populations in which Census blocks are incarcerated.

The Alliance will be happy to work with you to ensure a fair count. We are determined to see that New Jersey be freed of the harm to our democracy that prison-based gerrymandering causes. Our neighbors New York and Delaware along with Maryland have ended this practice. We trust that the Commission will lead New Jersey to join our neighbors in ensuring fair representation based on actual residents, not prisons.



⁴ N.J.S.A. 18A:13-8; Board v. New Jersey 2004 N.J. Super. LEXIS 361.

⁵ The state is required by federal law to redistrict each decade, but it is not required to use federal Census data to do so. See Mahan v. Howell, 410 U.S. 315, 330-332 (1973) (rejecting Virginia's argument that it was compelled to use Census Bureau assignments of residences of military personnel in its state legislative redistricting, and suggesting that a state may not use Census data it knows to be incorrect). As the Third Circuit has explained: Although a state is entitled to the number of representatives in the House of Representatives as determined by the federal census, it is not required to use these census figures as a basis for apportioning its own legislature. Borough of Bethel Park v. Stans, 449 F.2d 575, 583 n.4 (3rd Cir. 1971). See also Attached Appendix "States are Authorized to Adjust Census Data to End Prison-Based Gerrymandering, and Many Already Do"

Testimony of Gale Muhommad
Founder of Women Who Never Give Up
Before the
Apportionment Commission of New Jersey
January 29, 2011

Thank you, members of the Committee for holding this hearing here today. My name is Gale Muhommad Founder of Women Who Never Give Up. I am also representing as a member of the of the Integrated Justice Alliance, a solution-oriented collective of informed, cross-sector change agents who advocate for effective public policies before, during, and after incarceration in New Jersey.

I want to draw your attention to an often overlooked quirk in the Census data that counts prisoners as if they were residents of the prison rather than at their home addresses. When this data is used for redistricting purposes, it skews population distributions in New Jersey. Thanks to the state's smart policies and practices around parole, drug court, and the regional assessment centers, the New Jersey prison population dropped over the past decade. However, the problems associated with prison-based gerrymandering remain.

Each decade, New Jersey and its counties redraw their legislative districts on the basis of population to ensure that each district contains the same population as other districts. In this way, all residents are given the same access to government, fulfilling the Supreme Court's "One Person One Vote" rule.

At the Alliance, we take the position that the central value we should consider in redistricting is the one of fairness. However, unless the state takes action to correct a flaw in the Census Bureau's data, New Jersey's effort to draw fair districts will fail.

The Census Bureau counts incarcerated people as residents of the prison location, even though they cannot vote and are often not a part of the community that surrounds the prison. Assigning incarcerated people to the census block that contains the prison, rather than the census block that contains their home address, results in a significant enhancement of the weight of a vote cast in districts with prisons and dilutes the votes of all other residents in all other districts in the state.

The state is not powerless. Our neighbors of Maryland,¹ New York² and Delaware,³ have all passed legislation last year to adjust Census data for redistricting purposes. New Jersey should join them in giving each resident equal access to government, where political power is based on the actual number

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of residents, not the presence of a prison in the district. New Jersey itself has already taken a step in this direction. New Jersey law requires school board districts to exclude the prison population when apportioning school boards that have 9 or more members.⁴ I brought with me, and attached to the written testimony submission a fact sheet about how states are authorized to adjust Census data when redistricting, and that many already do.⁵

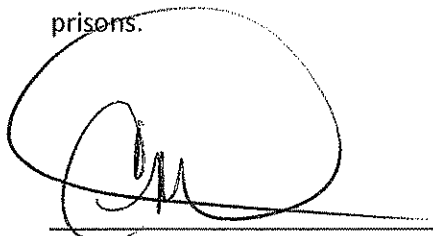
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But there are interim solutions. First, you could declare all people counted as residents of the correctional facilities to have been counted there incorrectly. As you do not know their correct addresses, you could instead declare their addresses unknown and treat them as at-large members of the state and not in any particular district.

Alternatively, you could take the prison populations in to account when drawing districts. You can make efforts to not put multiple large prisons in the same district, and you could take the prison populations in to account when analyzing and reporting population deviations. In particular, the problematic practice seen in some states of under-populating districts that are also padded with prison populations should be avoided.

Again, we understand that you have a very compressed timeline for redistricting and that you will have completed your efforts before the Census Bureau publishes the group quarters counts. However, we stand prepared to work with you to identify which populations in which Census blocks are incarcerated.

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the African-American, Asian and Hispanic populations in New Jersey have been among the fastest growing populations in the State. While New Jersey's White (non-Hispanic) population has decreased from 66% of the population in 2000 to 61% of the population, the African-American population has increased from 13.6% to 14.5%, the Hispanic population from 13.3% to 16.7%, and the Asian population from 5.7% to 7.8%. The 2011 Legislative Map must reflect these population trends as well as maximize the voting strength of racial and language minorities to the full extent permitted by law.

To achieve this purpose, the Commission must immediately address its governance and properly apply the traditional districting principles consistent with federal and state law.

I. Governance

For context, New Jersey is one of only 13 states which charge a bi-partisan commission with the redistricting process. The others include Alaska, Arizona, California, Colorado, Hawaii, Idaho, Missouri, Montana, Pennsylvania and Washington. In the majority of States, the redistricting process is handled by the legislature and in the vast majority of these States the Governor has the ability to veto the redistricting plan. Still, the redistricting and reapportionment process goes to the heart of the most fundamental democratic principle of self-governance. It, therefore, remains our hope that, at some point, the New Jersey Constitution will be amended to place even more distance between individual legislators and the redistricting process. In this regard, we agree with the observations provided by the Brennan Center For Justice, during its testimony before the Illinois Senate Redistricting Committee on October 13, 2009. Speaking on behalf of the Brennan Center, Justin Levitt stated:

January 29, 2011: Testimony by The New Jersey Legislative Redistricting Coalition

The process of drawing legislative lines affects the interests of individual legislators, the interests of political parties, and the interests of represented communities - or, put differently, the public good. When legislators personally are able to set the lines by which they are elected, there arises a natural temptation to conflate the three, even when those officials act with the purest of motives. That is, even conscientious elected representatives might be tempted to draw electoral lines that insulate their districts from effective challenge and promote their party's fortunes - because they believe themselves and their party best able to serve their constituents.

Such temptations - whether fueled by self-interest or zealous advocacy - weaken the democratic process and blunt the voice of the electorate. By drawing district lines to promote individual and party security, legislators with a hand in the process become enmeshed in the task of building districts based on favored constituents and disfavored ones. That is, representatives get into the business of choosing their constituents, rather than the other way around.

Turning more specifically to the issue of governance, we urge the Commission to be guided by the principles of transparency and inclusion. Transparency and inclusion are inextricably linked with accountability. When information is withheld from people or decisions are made in the dark corners of smoke-filled rooms, people lose both their ability to assess the performance of their representatives (and react accordingly) and their confidence in the system.

We, therefore, urge the Commission to ensure transparency in this process by adopting each of the following proposals:

1. **Pre-map Hearings:** The Commission should immediately agree upon and publish at least six public hearing dates during the month of February after the census information is certified by Governor Christie. These dates should be published no later than February 7, 2011, and two should be held in the North, Central and Southern geographic regions of our State, respectively, in cities that represent our residents in both urban and suburban communities.
2. **Post-map Hearings:** The Commission also should host at least 3 public hearings (again, in the State's North, Central and South geographic regions) after the Commission has reached a majority decision on a proposed map, but before the proposed map is certified to the Secretary of State. Allowing public hearings after the proposed map is drawn will provide a meaningful opportunity for public input and participation. In the absence of post-map hearings, the public will be forced into either remaining silent or incurring the cost of litigation to address its concerns. These options are inconsistent with an open, fair and democratic process.
3. **Transcripts:** The Commission should permit both transcripts and recordings for all public hearings both before and after the Commission proposes its map. These transcripts and recordings should be available online promptly after each hearing. Like the hearings themselves, publically

accessible transcripts and recordings of the hearings will provide a meaningful opportunity for thoughtful public input and participation.

We recognize that time is of the essence and that the Commission must complete its work by April 1, 2011 in order to meet the April 7th deadline for the 2011 Primary election process. Historically, each 10-member bi-partisan Commission has been stalemated on its initial attempt to agree upon a map. In light of the political posturing that already has occurred on both sides of the Commission's aisle, the public has every reason to believe that this 10-member Commission will follow suit with its predecessors. As previously noted, Article IV Section III of the New Jersey State Constitution states, if the 10-member bi-partisan Commission "determines that it is unable to" agree upon a map, it must certify as much to Chief Justice Stuart Rabner, who must appoint an independent 11-member. We urge the Commission to make this determination expeditiously – by or before February 11, 2011 (assuming that the Census data for New Jersey has been certified by the Governor before that date), so that Chief Justice Stuart Rabner may appoint the independent 11th member. Among other things, appointing the independent 11th member early will allow him or her to participate in the public hearings and to hear directly from the residents of New Jersey.

Additionally, to accommodate the additional hearings we have proposed, we ask the Commission to follow suit with its 2001 predecessor and request that the Legislature extend the filing deadline for the 2011 Primary elections. Acting in advance and adopting our governance proposals for pre- and post-map hearings, transcripts and an

early appointment of the Independent Commissioner, will help to ensure transparency, accountability and efficiency in the redistricting process.

II. Guiding Principles

With respect to the principles which must guide the work of this Commission, we want to be clear. Section 2 of the Voting Rights Act of 1965 prohibits “minority vote dilution.” Minority vote dilution occurs in situations where minority voters have been denied opportunities to elect candidates of their choice because the majority voters vote in a block that effectively locks minority-preferred candidates out of the process. The ability for minority voters to elect candidates of choice can be found in several types of districts which can be described as effective minority opportunity districts:

- **Majority-minority districts:** Majority-minority districts are districts where the minority voting age population is more than 50 percent of the districts’ voting age population.
- **Cross-over districts:** Crossover districts are referred to as districts where the minority voting age population make up less than a majority of the voting age population in a district but is large enough to elect their representative of choice with the help of a small number of majority voters who cross over to support the minority voters’ representative of choice.
- **Coalition districts:** Coalition districts are comprised of at least two minority groups who form a coalition to make up a majority of a district who vote cohesively to elect the candidate of the coalition’s choice. Creating minority

coalition districts may provide greater opportunities for minority voters to elect representatives of choice.

Although, cross-over and coalition districts have been used interchangeably there are important differences and these districts should not be confused with “influence districts.” Influence districts are districts where a significant number of minority voters are included in a district but they are provided no opportunity to elect candidates of choice. Influence districts “are not and should not be seen as a substitute for effective minority opportunity districts.”

Additionally, we do not read the recent U.S. Supreme Court’s decision in *Bartlett vs. Strickland*, 129 S.Ct.1231 (2009), to vitiate the ability of the Commission to draw coalition or crossover districts where the minority group is less than 50 percent.

Although, the *Bartlett* Court held that the creation of crossover districts is not required under *Bartlett* when a single minority group is not the majority in the district, *Bartlett* does not prohibit the redistricting body from creating crossover or coalition districts that provide minority voters with an opportunity to elect candidates of choice. In fact, the *Bartlett* Court recognized that, “racial discrimination and racially polarized voting are not ancient history. Much remains to be done to ensure that citizens of all races have an equal opportunity to share and participate in our democratic process and traditions.”

Commission to ensure that its proposed map adhere to the traditional redistricting principles required by the New Jersey Constitution:

1. **Equal Opportunity:** Districts will be drawn that maximize the voting strength of racial and language minorities to the full extent permitted by law. We

will challenge any map that proposes districts which deny or abridge the equal opportunity of racial and language minorities to participate in the political process, or to elect representatives of their choice. Here, the courts are clear: The seminal test under the law is whether the Commission's proposed map will have the effect of diluting minority voting strength, not whether it was enacted with the intent to discriminate against racial and language minorities.

2. **Contiguity and Reasonable Compactness:** Districts will be drawn that respect political boundaries and preserve communities of interest (i.e., communities concentrated within a geographic area that share ethnic, cultural, social, economic, religious and/or political interests). The Commission should understand, however, that we will oppose any attempt to construct bizarrely shaped districts which so concentrate racial or language minorities that they create so-called "super majority minority" districts. As former U.S. Supreme Court Justice Sandra Day O'Connor has said,

A reapportionment plan that includes in one district individuals who belong to the same race, but who are otherwise widely separated by geographical and political boundaries, and who may have little in common with one another...bears an uncomfortable resemblance to political apartheid.

Our view is that the creation of "super majority minority districts" (or "packing") effectively wastes the minority vote and violates both the Equal Protection Clause of the 14th Amendment and Section 2 of the 1965 Voting Rights Act. In this regard, we will watch very carefully the Commission's deliberations with respect

to Newark and Jersey City, both of whom have large minority populations that have historically exceeded the mean. We particularly want to avoid situations, like the 28th Legislative district, which extends from Newark to Nutley, which is further than driving from South Orange to Summit.

3. **Recognize The Facts:** The Commission must recognize the fact that New Jersey, like the rest of the United States, is becoming more diverse. Indeed, New Jersey's African-American, Asian and Hispanic population appears to be growing faster than the national average. The Commission's proposed map must contain districts that anticipate and incorporate these population trends. We are increasingly concerned when we hear of efforts to dilute the voting strength of Urban districts -- where large communities of color reside -- to support the growth in suburban districts. These arguments will be tested vigorously to ensure that they respect the overall population growth of New Jersey's communities of color and that they survive the legal crucibles we have described. To be clear, a map that reduces the existing opportunities for minorities to be represented in the State Legislature is unacceptable. Indeed, it is our view that, in light of the population trends, the proposed map must increase the number of majority minority districts and must result in an increase in the opportunities for racial or language minorities to serve as representatives in the New Jersey Senate and Assembly -- whether or not they live in majority minority districts. We believe that both the facts and the legal framework require this Commission to draw a map that results in a Legislature that reflects the diversity that is a reality in this State.

In closing, it has been said that the redistricting and reapportionment process is “more important than election day.” The Commission must remember that the federal and state laws which protect racial and language minorities exist for a reason – to combat the historical vote dilution African American, Asian and Hispanic voters have faced in this Country and in this State. For communities of color, who have historically been locked out both politically and economically, our participation in this process is also the culmination of centuries of sacrifice and struggle. History created the need for protection. The Commission has the obligation to ensure protection occurs in fact, and that democracy’s ultimate promise of one person one vote is fulfilled.

Thank you, again, for this opportunity. The NJLRC would be glad to provide additional information or analysis to the Commission at your request. We look forward to accompanying you through this important effort.