

REDISTRICTING NEW JERSEY

AFTER THE

CENSUS OF 2010



DR. ERNEST C. REOCK, JR.

March 2008

CENTER FOR GOVERNMENT SERVICES
Rutgers, The State University of New Jersey

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Edward J. Bloustein School
of Planning and Public Policy

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EXECUTIVE SUMMARY

The Census of 2010 has the potential for changing New Jersey's 13 Congressional districts, 40 state Legislative districts, freeholder districts in three counties, municipal wards in more than 60 municipalities, membership on 70 regional boards of education, and election districts throughout the state.

New Jersey has taken major steps over the past four decades to expedite the process of redistricting and reducing the likelihood of partisan political gerrymandering by providing that redistricting in most cases will be carried out by bipartisan boards that include some mechanism for breaking a stalemate. In fact, New Jersey may have gone further than any other state in attempting to level the political playing field.

While the state has a fairly good chance of retaining its 13 seats in the House of Representatives, the Congressional districts in urban areas are growing slowly, and they will have to be expanded. Congressional districts in Central and South Jersey are too large, and their borders will have to be contracted.

State Legislative districts are similarly affected, with the possibility that North Jersey will lose a district to Central or South Jersey.

Changes in county freeholder districts and municipal wards will depend upon relative population growth rates within those jurisdictions.

The apportionment of seats on regional school district boards of education also will depend upon relative population growth rates within each district, but here the prospects are complicated by recent decisions declaring the current statute unconstitutional in some cases.

Finally, after all of the other districts have been re-drawn, local election districts will have to be conformed to the new boundaries established.

This paper is an update of an Occasional Paper, *Redistricting New Jersey After the Census of 2000*, issued in 1998.

INTRODUCTION

It probably is no exaggeration to say that the Census of 2010 will change the political map of New Jersey significantly. The boundaries of the 13 Congressional districts and the 40 state Legislative districts almost certainly must be re-drawn to make them more equal in population. County freeholder districts in three counties and municipal wards in over 60 communities must be re-examined and revised if necessary for equal representation. In addition, the distribution of seats on 70 regional boards of education may have to be revised and, ultimately, the local election districts throughout the state will have to be re-drawn to conform to all of the other new boundary lines so that elections can be run efficiently.

Historically, it has been the practice to have most of these revisions carried out by a partisan elected body—usually the state Legislature. In many states over the years this practice has led to intense partisan gerrymandering and, sometimes, to complete stalemate. New Jersey may well have gone beyond any other state in relieving partisan elected bodies of this responsibility. At almost every level of representation, the districting process in this state now has been placed in the hands of appointed commissions with an effort being made to balance the strength of the major political parties so that a fair and expeditious result can be obtained.

The purposes of this paper are to describe the processes for districting the state and its subdivisions and to estimate broadly the changes that may be anticipated. Much of the statistical data included have been drawn from the *2007 New Jersey Legislative District Data Book*.¹

STATE LEGISLATIVE DISTRICTS

State Legislative districts were the first of the districting responsibilities to be taken from a partisan elected body. Convened as the result of a court case in which the composition of the state Legislature was declared unconstitutional², a state constitutional convention in 1966 recommended,

and the people approved in a referendum, the transfer of this task from the state Legislature to a bipartisan State Apportionment Commission.³

The State Apportionment Commission consists initially of 10 members, with five appointed by the state chairperson of each of the major parties as shown by the results of the last gubernatorial election. The appointments must be made by November 15 of the year in which the census is taken and certified by the New Jersey Secretary of State by December 1 of that year. Each party chair is admonished by the Constitution to take into account representation of the various geographical regions of the state.

The Commission is directed to complete its work and certify the new Legislative districts within one month of the receipt by the Governor of the official decennial census results, or by February 1 of the year following the census year, whichever date is later. If the Commission does not meet this deadline or if, before the deadline, it determines that it will be unable to do so, the Chief Justice of the New Jersey Supreme Court is directed to appoint an eleventh member, and the Commission then has one more month to complete its work. In practice, the original Commission in recent years has always resulted in a five-five partisan deadlock, and the eleventh member has been appointed.⁴ Meetings of the Commission are specifically exempted from the requirements of the Open Public Meetings Act.⁵

The pattern of Legislative representation originally established by the Constitutional Convention provided for the State Senate to be composed of 40 members and the General Assembly of 80 members.⁶ In a compromise reached at the Convention, senators were to be elected at large from multi-member districts, while Assembly members were to be elected from two-member districts within the Senate districts. Senate districts were to be formed, if possible, of a single county; otherwise, they would consist of several whole, contiguous counties. Senators would be apportioned among the districts in proportion to their population. Each Senate district was to be divided into as many Assembly districts as it had senators, and two members of the General Assembly were

to be elected from each Assembly district. If a Senate district was composed of two or more counties and two senators were apportioned to that district, one senator would be elected from each Assembly district.

This plan, while still included in the state's Constitution, has been modified substantially by a series of New Jersey Supreme Court decisions in the eight years following the Convention.⁷ The Court despaired of achieving substantially equal district populations under the original constitutional language and directed that 40 Legislative districts be created, with each electing one senator and two members of the General Assembly. This pattern of districts has been used ever since. Although invited by the Court in 1974 to revise the Constitutional language, the Legislature has never taken such action, and this part of the State Constitution is largely obsolete.

Delegates to the Convention hoped that creation of a bipartisan State Apportionment Commission would greatly reduce the partisan gerrymandering that might otherwise occur in the districting process. They went further, however, and included several provisions in the Constitution to limit the partisan drawing of Legislative boundaries⁸:

- (1) Districts must be formed of contiguous territory. This is a traditional requirement for districts, and it would seem rather obvious that a geographic constituency would have to be composed of adjoining territory.
- (2) Districts are to be as nearly compact as possible. Compactness is another traditional standard of districting, but there seldom has been any consensus on how to measure it.
- (3) Districts should be as nearly equal as possible in the number of their inhabitants. The Convention went further in defining the outer limits of population equality: no Assembly district should have more than 120% or less than 80% of the average district population.

Two other standards were only in the form of admonishments:

unless necessary to meet the above requirements:

(4) No county or municipality should be divided between Assembly districts unless it has more than 1/40 of the state's population.

(5) No county or municipality should be divided into more parts than one plus the whole number obtained by dividing its population by 1/40 of the state's population.

These anti-gerrymandering provisions have had a mixed reception. Equal population among the districts has been considered by the New Jersey Supreme Court as the preeminent requirement. The Convention's rule permitting districts up to 20% above and 20% below the average size, for a range of 40%, was found by the Court to be far too generous. While specific limits have never been stated, the Court has referred favorably to a United States Supreme Court decision permitting a 9.9% range of variation. New Jersey deviations of 20.8% and 26.2% have been cause for invalidating districts. A range of 10% would appear to be the outer limit that would be acceptable. In recent years, the State Apportionment Commission has been even more precise. After the Census of 1980 the state Legislative districts had a range of 7.7%, after 1990 the range was only 4.6%, and in 2000 it was 7.8%.

In order to achieve the necessary degree of population equality, the New Jersey Court ruled out the use of multi-member Senate districts composed of whole counties and directed that one state senator should be elected from each of the two-member Assembly districts. As a result, the districts have now come to be called Legislative districts. In fact, in order to make the districts acceptably equal, all of the Constitutional provisions intended to preserve the integrity of county boundaries were discarded by the Court. On the other hand, the Court approved of using complete municipalities as the "building blocks" of Legislative districts, so long as the municipalities with populations too large for a single district are divided. Actually, Newark and Jersey City, the two

communities in question, have been split three ways in recent years in violation of the rule limiting the number of municipal fragments that might be created in the largest municipalities, and the New Jersey Supreme Court in 2001 accepted the view that this requirement could be ignored.⁹

The Court approved of the requirement for forming districts of contiguous territory. No districts have been found to be formed of non-contiguous territory, although questions have been raised on occasion when large bodies of water intervene between separated land masses.

Numerous districts have been criticized as non-compact, but the Court has considered this to be a low priority standard compared with population equality. In fact, the Court accepted the creation of “shoestring” or “horseshoe” districts to attain “political balance,” while saying that this would not be tolerated if done for “partisan advantage.” The court also said that providing protection to incumbent legislators was a legitimate factor that might be considered in drawing districts.

Prospects for 2010

Recent population estimates show that the Legislative districts have grown at varying rates. As of 2006, the estimated populations extended from a low of 202,304 people in the 34th District in Essex and Passaic Counties to a high of 241,889 in the 30th District in Burlington, Mercer, Monmouth, and Ocean Counties.¹⁰ This constitutes a range of 18.1%, far exceeding the 10% level that appears to be acceptable. By the year 2010 the actual range undoubtedly will be much greater.

In general, the Legislative districts in the urban areas of northeast New Jersey (the 27th, 29th, and 34th in Essex, Union, and Passaic Counties; the 31st, 32nd, and 33rd in Hudson County; and the 15th in Mercer County) are both small and slow growing. They will need to have their areas expanded. In contrast, the fastest-growing Legislative districts are found in outlying areas. In addition to the 30th District, the 9th in Atlantic, Burlington, and Ocean Counties; the 23rd in the northwestern part of the state; and the 2nd in Atlantic probably will be well above the population of

the average district by 2010 and will require downsizing. As these changes are made there probably will be a “domino effect” resulting in changes even in those districts that are very near the average size.

Newark and Jersey City probably will still have at least 1/40 of the state’s population, requiring them to be divided by Legislative district lines.

A critical factor in re-drawing the state’s Legislative districts is the short time available between the receipt of final census data—which at best probably will happen in early February 2011—and the statutory date when the county clerks must be notified of the offices to be filled in the legislative elections of 2011 (60 days before the primary election).¹¹ If the data are not delivered promptly by the Bureau of the Census, or if the State Apportionment Commission takes its full time allotment and then deadlocks, it will be very difficult to complete the districting process within the legal time period.

MUNICIPAL WARDS

The second of the changes to bipartisan districting commissions dealt with municipal wards. As of January 1, 2006, 64 of New Jersey’s 566 municipalities use forms of local government in which some or all of their governing body members are elected from wards into which the community has been divided.¹²

In 1981 the Legislature eliminated various procedures used earlier for the drawing of municipal ward boundaries and provided a uniform process for all municipalities.¹³ After every census the municipal wards will be re-drawn, if necessary, by a board of ward commissioners consisting of the members of the county board of election plus the municipal clerk. The county board of election is made up of four members (two from each party); all are commissioned by the Governor upon nomination by the leaderships of the two major political parties in the county.¹⁴

If a political deadlock occurs, the person with the deciding vote is the municipal clerk. In

earlier years, the municipal clerk often was a highly political official, in many cases holding this position as a partisan elective office. This has changed drastically. Today, municipal clerks in New Jersey are appointed officials. They must complete an extensive training program and pass a state examination to hold their office. After a brief period of time, they attain tenure and may be removed only for cause.¹⁵ While political factors may tinge an original appointment, most clerks now are in a position to perform their duties without political obligation or favoritism.

The board of ward commissioners is required by law to meet within three months of the promulgation by the Governor of the federal decennial census, and it has 30 days to complete its work. The law requires that wards be formed of compact and contiguous territory. The most precise requirement is that the population of the largest ward may not exceed the population of the smallest ward by more than 10% of the mean average population of the wards. This provision, in essence, specifies the same standard of population equality that the New Jersey Supreme Court has implied is appropriate for state Legislative districts.

Prospects for 2010

A key statutory date in the revision of municipal wards is the action of the Governor in “promulgating” the official census figures for New Jersey. “Promulgation” of the census is defined by law as the action of the Governor in filing with the Secretary of State any bulletin issued by the director of the Bureau of the Census showing the population of the state.¹⁶

Although the first detailed report of the census should be received by early February, the Governor has often delayed filing it with the Secretary of State. For the last three censuses the official filing dates have been:

Census of 1980 – Filed January 18, 1982

Census of 1990 – Filed February 4, 1998

Census of 2000 – Filed April 12, 2001

Based on this record, the official “promulgation” of the census of 2010 probably should not be anticipated before April 1, 2011. In this event, it would be possible for new wards to be adopted in time for elections in 2011 if the board of ward commissioners were to act very rapidly. However, the three-month “grace” period permitted before a board of ward commissioners must meet will probably lead to most re-drawing of municipal wards taking place later in 2011 for first use in the elections of 2012. Any delay by the Governor in promulgating the census would push the revision of municipal wards even later in the decade.

Data are not available on the current ward populations of New Jersey’s municipalities. In many cases, if the wards were drawn appropriately in the past, and if the population change within a municipality has been fairly uniform since then, the existing wards may be acceptable for use after 2010. Every municipality using wards, however, must re-examine those wards when the new population figures become available, and this means that the county boards of election in most counties also must become involved.

It should be noted that there are a number of older municipalities in the state that have replaced a form of government requiring the election of municipal governing body members from wards with an at-large plan of representation. The wards established in earlier years may still be used as the names of neighborhoods or as convenient subdivisions for reporting election results. However, since no public officials are elected from these old wards, there is no necessity for their boundaries to be revised on the basis of new census data.

COUNTY FREEHOLDER DISTRICTS

County freeholder districts were the third kind of representative districts to be placed in the hands of a bipartisan districting commission. In 1972, the Legislature enacted an optional county charter law modeled after the Optional Municipal Charter Law of 1950 (OMCL).¹⁷ Among the options available is the possibility of electing the members of the board of chosen freeholders—the

county governing body—either at large from the entire county or from districts into which the county would be divided. The law uses the term “election districts,” but they will be referred to here as “freeholder districts” to avoid confusion with the local election districts that are established in almost every municipality for the purpose of administering all elections.

Six counties have made use of the optional county charter law since 1972, but only three of them have selected an option in which freeholders are chosen from districts. In Atlantic and Essex Counties there are five single-member districts and four freeholders elected at large; Hudson County elects the entire nine-member board from single-member districts.

As the law was originally enacted, the drawing of freeholder districts was performed by a district commission consisting of the four members of the county board of election plus the county clerk. The usual requirements for compact and contiguous territory were included. However, the county law omitted any specific limitation on population inequalities among the districts and merely stated that the districts “...shall be as equal as possible in population.”

In 1992, members of the Legislature realized that the county clerk, who remains an elected official running for office on a partisan ticket, often is a highly partisan public official. The law covering the drawing of freeholder districts was changed so that the composition of the district commission follows the model of the State Apportionment Commission used to draw state Legislative districts.¹⁸ The county district commission is composed initially of four members, with two appointed by each of the county party chairpersons of the two major political parties. Due consideration is to be given to representation of the different geographic areas of the county. The appointments must be made on or before the tenth day following receipt by the Governor of the official federal decennial census figures. The commissioners are to meet within three months following receipt of the census figures, and they have 30 days to complete their work. If they fail to meet that deadline, or if they agree to disagree before that time, the Chief Justice of the Supreme Court is directed to appoint, as a fifth member, “a fair minded and impartial person who shall not have held

elected public or party office in this state” at any time for the prior three years. The commission then has an additional month to certify new district boundaries.

Prospects for 2010

It is not possible at this time to make estimates of how population changes since 2000 will affect the districts. In all likelihood, appointments to the county freeholder districting commissions will have to be made, but whether the districts will need to be revised will depend upon population changes within the county.

As with municipal wards, the county freeholder districts could be revised in time for the 2011 elections, but it is more likely they will not be revised until later in that year, with their first use in the 2012 elections.

CONGRESSIONAL DISTRICTS

Congressional districts are the most recent constituencies to be placed within the responsibility of a bipartisan districting commission, with the state Constitution being amended for this purpose in 1995.¹⁹

Representation in the United States House of Representatives is determined through a two-part process. First, the seats in the House are apportioned, or distributed, among the states in proportion to their population. According to federal law, within a week after the first regular session of Congress starting after the census, the President is required to transmit to Congress a statement showing the number of seats to which each state will be entitled, starting with the next Congress.²⁰ The entitlement to seats is calculated by the method of equal proportions. Under this method, one seat is first awarded to each state and the remaining seats in the House are then distributed through the calculation of a priority list based on the populations of the states. The size of the House has

been set at 435 members for many years and will remain at that number unless new action is taken by law to make a change. The Clerk of the House of Representatives is directed to notify the Governor of each state of the number of seats assigned to that state.

After the number of seats assigned to the state has been established, it is up to each state to provide for the creation of single-member Congressional districts. Historically, this has been the responsibility of the state Legislatures. New Jersey's track record has not been very distinguished. The districts established in 1931 remained untouched, although having widely different populations, until the state received an additional seat after the 1960 census. More recently, partisan gerrymandering after the 1980 census resulted in New Jersey's districts being declared unconstitutional by the United States Supreme Court.²¹

The New Jersey Legislature approached redistricting after the 1990 Census with this unhappy history in mind. A substantial revision of the existing districts was indicated, since the number of seats assigned to the state had been reduced from 14 to 13. No action was taken during 1991, but something had to be done early in the next year; otherwise, under the federal law the entire state Congressional delegation would have to be elected at large. While Democrats controlled both the Governor's office and the Legislature in 1991, the elections of that year resulted in Republicans taking control of the Legislature for 1992. The stage was thus set for a bipartisan approach to the districting process.

The result was legislation providing for a bipartisan New Jersey Redistricting Commission consisting of six representatives from each of the two major parties, plus a 13th member chosen by the first 12.²² Districts drawn by the Commission were required to provide for equality of population among the districts, the preservation of minority voting status, geographical contiguity, and "reasonable protection for districts from decade to decade against disruptive alteration due to redistricting." The Commission took seriously its charge to make the populations of the districts "as

nearly equal as practicable.” Eleven of the 13 districts it drew had populations of 594,630 people, while the other two each had 594,629 residents. This precise result was achieved by dividing 24 municipalities, in some cases three ways. While there was some criticism of this approach and the lack of compactness of some districts, the results stood with no serious challenge. Unfortunately, the law establishing the bipartisan Redistricting Commission was written to expire on January 1, 2001, thus throwing the entire process back into the Legislature.

The success of the temporary Redistricting Commission in 1992 led to a proposal for permanent procedures to draw Congressional districts. A referendum for an amendment to the state Constitution was placed on the ballot in November 1995 and was approved by the voters.²³ It follows fairly closely to the pattern of the temporary commission. The Redistricting Commission will have 13 members. Two each are to be appointed by the President of the Senate, the Speaker of the General Assembly, the minority leader of the Senate, the minority leader of the General Assembly, and by the state chairpersons of each of the two major political parties. Appointments must be made on or before June 15 of each year ending in a 1 and certified to the Secretary of State by July 1. Each party delegation selects one of its members as its own chairperson.

The 13th, or “independent” member—who may not have held public or party office in the state for five years—is to be chosen by the two party delegations by July 15. If they are unable to agree on a person by July 20, they must notify the Supreme Court of the two people receiving the highest number of votes. By August 10, the Supreme Court selects one of them as the 13th member.

The Commission is directed to meet to organize no later than the Wednesday after the first Monday in September of each year ending in a 1, with the independent member serving as chair. It must complete its work by the later of either the third Tuesday in the next year or within three months after receipt of official notification from the Clerk of the House of Representatives regarding the number of House seats apportioned to New Jersey. If the Commission cannot agree on a

plan of districts by this time, the two plans receiving the most votes (but at least five votes) are submitted to the Supreme Court, which selects one of them. The Commission is required to hold at least three public hearings in different parts of the state; but, otherwise, need not meet in public.

In a major change from the statute authorizing the temporary Redistricting Commission, the Constitutional language adopted in 1995 omits any mention of standards for the districts. There is no explicit requirement for population equality, contiguity, compactness or any other desirable quality of the districts created. One explanation for this may be the impact of the federal Voting Rights Act of 1965. Following the Census of 1990, the states coming under the review provisions of that law were subjected to considerable pressure from the U.S. Department of Justice to draw districts that gave little weight to the traditional standards for districts. Instead, the Department interpreted the Act to require that districts be established that would enhance the voting strength of minorities. The resulting districts in many cases had boundary lines and shapes that were considered bizarre by some people, as their architects sought to include sufficient scattered pockets of minority voters in a district to make feasible the election of a minority representative. While this policy had its greatest impact in southern states, it was effective in such northern states as New York and Illinois, and its impact was noted throughout the country. The policy came to at least a partial halt in the mid-1990s when the United States Supreme Court, by a 5-4 vote, invalidated many such districts.²⁴ The law of the land now appears to be that racial factors must be taken into consideration in drawing districts, but they may not be used as the predominant factor in constructing representative constituencies. Uncertainty about where the Court was headed may well have resulted in the omission of any explicit standards for Congressional districts in the New Jersey Constitution.

Prospects for 2010

The first question to be asked is whether New Jersey will retain 13 seats in the House of Representatives. Since the state apparently is growing less rapidly than the rest of the country, the

loss of a seat is possible. A test apportionment, made for this paper, using Bureau of the Census population projections for the year 2010²⁵, shows that the state is in some danger of losing a seat. When the equal proportions priority list is prepared, New Jersey retains its 13th seat at seat 429 among the total of 435.²⁶ A similar projection made in 1998 for the 2000 census placed New Jersey's 13th seat at seat 419. The validity of this calculation depends upon the accuracy of the Census Bureau's population projections for 2010. Minor changes in growth patterns before 2010 could push New Jersey's claim to a 13th seat beyond the 435-seat cut-off.

Another factor that might impact New Jersey's claim to a 13th seat is the possibility of undercount adjustments to the Census of 2010. When this factor was tested in 1998 for the upcoming Census of 2000, the projected undercount adjustment appeared to reduce the state's chances of retaining a seat from 419th to 422nd place. Whether this sort of impact would take place in 2010 under an undercount adjustment is not known.

A third factor recognized in 1998 was the possibility of statehood for Puerto Rico. At that time, the six seats assigned to the new state would have posed only a modest threat to New Jersey's claim to a 13th seat. Today, statehood for Puerto Rico seems to have receded as an imminent possibility; if it were to reappear, however, it could have a significant impact on New Jersey's level of representation.

Finally, the impact of Hurricane Katrina on the 2010 populations of the states is still unknown. The projection of seats made for this paper is based on population projections for 2010 issued by the Bureau of the Census in 2005, prior to the hurricane.

The New Jersey Congressional districts drawn by the Redistricting Commission in 2001 were almost precisely equal in the 2000 population. In order to do this, 29 municipalities were split between two or more Congressional districts. The same population trends noted for state Legislative districts apply also to Congressional districts, which have grown at significantly different rates. By 2006, population estimates show the 8th District (covering parts of Essex and Passaic Counties)

as the smallest, with a population of 645,449; and the 13th District (including parts of Hudson, Essex, Union, and Middlesex) as the second smallest. Very large districts are the 4th District (in parts of Burlington, Ocean, and Monmouth Counties) with an estimated 694,147 people, and the 12th District (in the central part of the state). The range of variation, while only 7.3% in 2006, undoubtedly will be larger in 2010. The courts have regularly said that populations must be much more nearly equal among Congressional districts than among state and local representative districts. Changes in the boundaries of the largest and smallest districts almost certainly will be needed, and other districts will feel the impact through the “domino effect.” Again, the major impact will be to move district boundaries further out from the highly urban areas of the northeast and into the growing areas of Central and South Jersey.

REGIONAL SCHOOL DISTRICTS

New Jersey has 70 regional school districts in which each covers more than a single municipality. Membership on their boards of education has long been based on the population of the participating municipalities or constituent school districts. In contrast to all of the foregoing districts, however, representation on regional boards of education usually does not involve drawing lines on a map; but, rather, the distribution of seats among constituencies with fixed boundaries. In this sense it is similar to the distribution of seats in the House of Representatives among the states.²⁷

State law covering the process is written to meet two different situations.²⁸ For regional school districts with nine or fewer constituent districts, the law merely states that seats on the board shall be apportioned among the constituent districts “as nearly as may be according to the number of their inhabitants,” except that every district must receive at least one member. In a provision quite different from any other current statute, the term “inhabitants” is defined as excluding patients in or inmates of any State or Federal hospital or prison; or any military personnel stationed at, or civilians residing within the limits of, any U.S. Army, Navy, or Air Force installation. In practice,

the calculation, which is done by the state Department of Education, in recent years has generally followed the method of equal proportions, just as is done for the House of Representatives.

The other situation is much more complicated. Before 1971 the apportionment of seats on regional district boards of education, where there were more than nine constituent districts, consisted of one seat for every constituent district, regardless of its population.²⁹ This appeared clearly in violation of the “one person-one vote” decisions of the courts that commanded great attention during the 1960s and 1970s. As a result of several court actions culminating in a New Jersey Supreme Court decision in 1977³⁰, the statute for large regionals was re-written. As it now stands, the law—which applies only to North Hunterdon/Voorhees Regional—attempts to provide for equal representation while maintaining some identification with local communities through a step-by-step process that may be delegated to an administrative official:

- (1) Very small constituent districts are grouped into larger representative districts depending on their size and common boundaries;
- (2) Seats on the board are distributed by the method of equal proportions for a range of different board sizes;
- (3) The size of the board is set at the point where population equality is greatest;
- (4) Board members are assigned weighted votes depending on the number of people they represent.

In addition, the population used in this part of the statute is the total census population, rather than the modified number of inhabitants used for smaller regional school districts. The New Jersey Supreme Court in a footnote had expressed considerable doubt that the exclusions of population still in the small regional statute were constitutional.

The calculations normally have been made by the state Department of Education or the county superintendent of schools, who represents the Department. No timetable is specified by the law.

Prospects for 2010

The prospects for 2010 are conditioned by the possibility of judicial action. In 1983, a Superior Court case involving Shore Regional resulted in a conclusion that the statutory provisions applying to smaller regionals were unconstitutional on “one person-one vote” grounds, just as the earlier North Hunterdon decision had concluded for large regionals.³¹ The judge in a bench opinion directed that an additional seat on the board be given to West Long Branch and that weighted voting be used to correct any remaining under-representation.

More recently, in 1998 a U.S. District Court for the District of New Jersey also found that the statute for small regionals was unconstitutional on the same “one person-one vote” grounds when applied to Freehold Regional.³² In this case, Marlboro Township, one of the constituent districts, had one seat for a 1990 population of 27,974, while Englishtown Borough had the same representation for a population of 1,268. Again, the solution ordered by the court combined large and small municipalities into representative districts and assigned weighted votes to their representatives on the board of education. Neither of these rulings has been applied to the rest of the smaller regional school districts, although the potential for a more sweeping change remains.

Beyond these cases, the reapportionment of representation on regional boards of education will depend on the population growth in each of the constituent districts.

ELECTION DISTRICTS

The final step in redistricting the state will be an adjustment of the local election districts, often known in other states as voting districts or precincts. These are the smallest geographic areas used for election administration, and each one must fit entirely within any other district from which a representative is elected. Thus, their final determination must await completion of the drawing of state Legislative districts, municipal wards, county freeholder districts, and Congressional districts.

Their principal purpose is to facilitate the conduct of an election, and the overriding requirement is the convenience of the voters.³³

The county board of election is responsible for establishing the election districts in the county.³⁴ Election district boundaries may not be changed from a date 75 days before any primary election until the date of the general election in November. Since 2012 is a presidential election year, recent legislation creating a special presidential primary in February of that year will result in a very limited period in November 2011 during which election districts may be changed. In addition, no changes may be made between January 1 of a year ending in a 7 and December 1 of a year ending in a 0, unless approved in advance by the New Jersey Secretary of State. The latter requirement was placed in the law in order to “freeze” the election districts in place for four years prior to a census, since the Bureau of the Census is required by federal law to make an early report of population totals by whatever geographic units the state requests. In the past, this has been done by election districts.³⁵

The standards for election districts are fairly flexible. They should be formed of contiguous territory, be compact in area, and use obvious landmarks where possible (such as roads, railroad tracks, rivers, or brooks) as boundaries. In general, they usually should not have more than 750 registered voters (unless additional election machinery is provided) and should not be smaller than 250 voters. However, they may be smaller if this would make them more convenient for the voters.

There is a potential for confusion stemming from the re-drawing of election districts. With the end of the four-year “freeze” on election district boundary changes on December 1, 2010, there may be pressure for immediate revision of the districts if they have grown too large or too small. A problem then may arise because the Bureau of the Census will have reported population data on the basis of the “old” election districts as they existed early in 2010. If the boards charged with re-drawing Legislative districts, Congressional districts, county freeholder districts, and municipal wards in 2011 are not aware of election district changes made since the Census was taken, they

may wind up using boundaries and populations that do not match correctly with the election districts then in use.

CONCLUSION

Political considerations probably will never be completely eliminated from the districting process. Even where bipartisan boards have been established to prevent runaway gerrymandering there is little to prevent partisan elected officials from being appointed to those boards. In some cases, no doubt, elected representatives lobby for their appointment to such a board to protect their own political interests. In other cases, someone may gain a spot on the bipartisan board mainly to protect some interest group, rather than represent the political party. But even with these and other caveats, the removal of the districting responsibility from elected partisan political bodies almost certainly is a step toward providing a more level political playing field.

ENDNOTES

¹2007 *New Jersey Legislative District Data Book* (New Brunswick, N.J.: Rutgers University Center for Government Services, in process).

²Jackman v. Bodine, 43 N.J. 453 (1964).

³Constitution of the State of New Jersey, Art. IV, Sec. III, Par. 1; Ernest C. Reock, Jr., *Unfinished Business: The New Jersey Constitutional Convention of 1966* (New Brunswick, N.J.: CUPR Press, Center for Urban Policy Research, Rutgers University, 2003).

⁴For a detailed description of the State Apportionment Commission's work in 1981 and 1991 see: Donald E. Stokes, *Legislative Redistricting by the New Jersey Plan* (New Brunswick, N.J.: The Fund for New Jersey, 1993).

⁵N.J.S.A. 10: 4-7.

⁶Constitution, Art. IV, Sec. II, Par. 1, 3.

⁷Jackman v. Bodine, 49 N.J. 406 (1967), 50 N.J. 127 (1967), 53 N.J. 585 (1969), 55 N.J. 371 (1970); Scrimminger v. Sherwin, 60 N.J. 483 (1972), 60 N.J. 498 (1972). Davenport v. Apportionment Commission, 63 N.J. 433 (1973), 65 N.J. 125 (1974).

⁸Constitution, Art. IV, Sec. II, Par. 3.

⁹McNeil v. Legislative Apportionment Commission of the State, 177 N.J. 364, 828 A.2d 840 (2003).

¹⁰2007 *New Jersey Legislative District Data Book*, op. cit.

¹¹N.J.S.A. 19:12-1; P.L. 2007, C. 254.

¹²See 2007 *New Jersey Legislative District Data Book* for identification of municipalities using wards.

¹³N.J.S.A. 40:44-9 et seq.

¹⁴N.J.S.A. 19:6-17 et seq.

¹⁵N.J.S.A. 40A:9-133.1 et seq.

¹⁶N.J.S.A. 52:4-1.

¹⁷L. 1972, c. 154; N.J.S.A. 40:41A-1 et seq.

¹⁸ N.J.S.A. 40:41A-118.

¹⁹ Constitution of the State of New Jersey, Art. II, Sec. II.

²⁰ United States Code 2:2a et seq.

²¹ Karcher v. Daggett, 462 U.S. 725 (1982).

²² L. 1991, c. 510.

²³ Constitution of the State of New Jersey, Art. II, Sec. II.

²⁴ Shaw v. Reno, 509 U.S. 630 (1993); Miller v. Johnson, 515 U.S. 900 (1995).

²⁵ U.S. Census Bureau, Population Division, Interim State Population Projections, 2005, Internet Release of April 21, 2005, Table 6.

²⁶ No adjustment has been made for the fact that the population estimates are for July 1, 2010, while the census will be taken as of April 1.

²⁷ A full listing of the regional school districts, including their constituent municipalities, may be found in the *2007 New Jersey Legislative District Data Book*, op. cit.

²⁸ N.J.S.A. 18A:13-8.

²⁹ Only one regional district was involved: North Hunterdon, then with 11 constituent districts.

³⁰ Franklin Township v. Board of Education of North Hunterdon Regional High School, 74 N.J. 345 (1977).

³¹ Borough of West Long Branch v. Hughes, et al., Docket No. L-9076-82E P.W.

³² Township of Marlboro v. Board of Education of the Freehold Regional High School, Civil Action No. 97-5401. June 23, 1998.

³³ The only persons elected from election districts are the members of the county political party committees, one male and one female per district; N.J.S.A. 19:5-3.

³⁴ N.J.S.A. 19:4-10 et seq.

³⁵ United States Code 13:141.

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Testimony of Dr. Johanna Foster
Member, Integrated Justice Alliance
Before the
Apportionment Commission of New Jersey
January 29, 2011

sociologist and
Thank you, members of the Committee for holding this hearing here today. My name is Dr. Johanna Foster and I am a member of the Integrated Justice Alliance, a solution-oriented collective of informed, cross-sector ~~change agents~~ *partners* 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 of residents, not the presence of a prison in the district. New Jersey itself has already taken a step 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).

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.

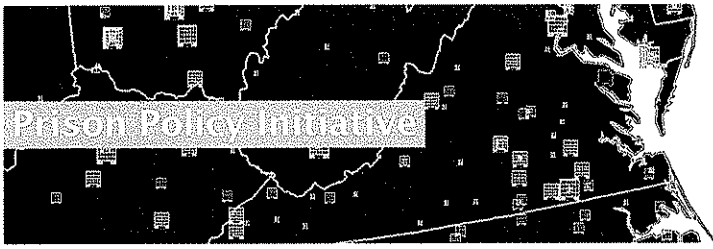
Alternatively, you could take the prison populations in to account when drawing districts. You can make efforts to not put multiple large prisons in the same district, and you could take the prison populations in to account when analyzing and reporting population deviations. In particular, the problematic 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"



Demos

States are Authorized to Adjust Census Data to End Prison-Based Gerrymandering, and Many Already Do

States can fix the Census data by creating a special state-level census that collects the home addresses of people in prison and then adjusts the U.S. Census counts prior to redistricting. In 2010, three states — New York, Maryland and Delaware — passed legislation to do just that for redistricting purposes.

More than 100 counties with large prisons throughout the United States already reject Census data for redistricting purposes and fairly apportion political power within the county on the basis of actual — not prison — populations. The U.S. Supreme Court has held that states are not required to use the Census Bureau's data; the state can choose what population base to use for redistricting. Basic ideas of fairness in our democracy, such as "one person, one vote," require that districting be based on a population count that accurately reflects local populations.

For more information about Prison-Based Gerrymandering, see the Prison Policy Initiative website and weekly newsletter at <http://prisonersofthecensus.org>

or the Dēmos website at <http://www.demos.org>

Federal law does not require states to use Census data in redistricting

Although states are required to redraw state legislative districts each decade to assure compliance with the federal Constitution's "one person, one vote" requirements, they are not required to use federal Census data in doing 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).

Furthermore:

Neither in Reynolds v. Sims nor in any other decision has this Court suggested that the States are required to include ... persons denied the vote for conviction of crime in the apportionment base by which their legislators are distributed and against which compliance with the Equal Protection Clause is to be measured. The decision to include or exclude any such group involves choices about the nature of representation with which we have been shown no constitutionally founded reason to interfere. Burns v. Richardson, 384 U.S. 73, 92 (1966)

States are therefore free to use their own censuses or to correct how the federal census counts prisoners.

(over, please)

Other precedent for deviating from the Census for redistricting purposes

The **Kansas** Constitution requires the legislature to adjust federal census data to exclude nonresident military personnel and nonresident students and count resident military and students at their home addresses when conducting legislative apportionment. Kan. Const. art. 10, § 1.

The **Alaska** Supreme Court held that it was permissible under the Fourteenth Amendment to use a formula based on registration numbers to reduce the census tally of military personnel in the population base used for state legislative redistricting. See Groh v. Egan, 526 P.2d 863, 870, 873-74 (Alaska 1974).

The Supreme Court of **Oregon** has held that the Secretary of State is not obligated to rely on census data in apportioning districts. Hartung v. Bradbury, 33 P.3d 972, 598 (Or. 2001). Indeed, the court held that the Secretary of State violated the Oregon Constitution by failing to make corrections to federal census data to place a prison population in the correct census block. Id. at 599.

An **Illinois** Appeals Court upheld excluding prisoners from the population when apportioning a county into districts. Knox County Democratic Cent. Committee v. Knox County Bd., 597 N.E.2d 238 (Ill. App. Ct. 1992). The court stated that “to require that ineligible voters must always be included in the apportionment base merely because they were included in the census would violate the Equal Protection Clause.” Id. at 239.

New Jersey statutes require, and the state appellate court upheld, a requirement that prison inmates be excluded from the population for purposes of apportionment in certain school districts. Board of Educ. of Northern Burlington Co. Regional School Dist. v. New Jersey State Bd. of Educ., 858 A.2d 576, 580-81 (N.J. Super. Ct. App. Div. 2004)

Colorado and **Virginia** have enacted legislation allowing and encouraging, respectively, a departure from federal Census data so as to exclude prison populations for purposes of county or local redistricting. See Colo. Rev. Stat. § 30-10-306.7(5) (a) (requiring boards of county commissioners to subtract, from federal census numbers, the number of persons confined in any correctional facility in the county when calculating population equality for purposes of redistricting; Va. Code Ann. § 24.2-304.1 (C) (permitting governing body to exclude prison population in redistricting when such population exceeds 12 percent of the total county population).

The **Mississippi** Attorney General directed Wilkinson County to adjust census data for redistricting purposes, stating that prison populations:

should not be used in determining the population of county supervisor districts for redistricting purposes by virtue of their temporary presence in a detention facility or jail in the county, unless their actual place of residence is also in the county.

Mississippi Attorney General Opinion 2002-0060, 2002 WL 321998 (February 22, 2002).

Brenda Wright is the Director of the Democracy Program at Dēmos, a national, non-partisan research, policy and advocacy organization. An attorney with over 20 years of experience in voting rights, redistricting, campaign finance, and other electoral reform issues, Brenda directs the Democracy Program’s work to reduce barriers to voting and electoral participation and promote a robust and inclusive democracy.

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Peter Wagner is Executive Director of the non-partisan Prison Policy Initiative which documents the impact of mass incarceration on the larger society. As a law student in 2002, Peter wrote the first district-by-district analysis of how the Census Bureau’s prison count distorts state legislative redistricting. In 2003, he founded the Prisoners of the Census project and began work nation-wide to develop workable policy solutions to prison-based gerrymandering at the state and county levels.

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Last update: 9/22/10





LATINO ACTION NETWORK

**TESTIMONY BY
THE LATINO ACTION NETWORK
BEFORE THE NEW JERSEY STATE APPORTIONMENT COMMISSION
January 29, 2011**

DELIVERED AND SUBMITTED BY:

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Good afternoon distinguished members of the New Jersey State Apportionment Commission. I am Christian Estevez, Executive Vice President of the Latino Action Network. Earlier today you heard from my colleague Frank Argote-Freyre, President of the Latino Action Network. The LAN thanks you once again for the 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.

The Latino Action Network is active at the grassroots level in communities throughout the state of New Jersey. In this area, we are active through our affiliated organization, the Latino Coalition, which represents Latinos in Monmouth and Ocean Counties. New Jersey's Latino population has grown significantly since 2000 – from 13.3 percent, to, according to the latest available data, 16.7 percent. Much of the growth of the Latino community in New Jersey has occurred in areas of Monmouth and Ocean counties.



Ocean County has experienced a sizable increase in Latino population in Toms River and Lakewood. Sizable increases in Latino population can also be seen in the Monmouth County towns of Freehold, Red Bank, Long Branch, Asbury Park and the Bay Shore Region which include the towns of Keyport, Hazlet and Keansburg.

We ask that the Commission pay close attention to the growth of the Latino population in these areas and do all in its power to ensure that the emerging Latino community here and other parts of New Jersey is properly represented in the newly drawn legislative districts. Doing so should go a long way in remedying the gross underrepresentation of Latinos in New Jersey's legislature.

While there has been some small improvement over the years in the level of Latino representation, our community is nowhere near being reflected in the make-up of our State Legislature. While Latinos make up almost 17 percent of New Jersey's population, Latinos currently comprise less than 7 percent of the State Legislature. If representation were determined by a pure analysis of the numbers we should have 13 Assembly members and 7 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 65% Latino (a super-majority), 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 BY
THE NEW JERSEY LEGISLATIVE REDISTRICTING COALITION
BEFORE THE NEW JERSEY STATE APPORTIONMENT COMMISSION

DELIVERED AND SUBMITTED BY:

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Good morning distinguished members of the New Jersey State Apportionment Commission. I am Roberto Frugone, 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 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.

Aula M. Sumbrel

****WHAT YOU CAN SAY AS A PARTICIPANT OF THE HEARINGS****
To The Apportionment Commission 1/29/11

*At the Alliance, we take the position that the central value we should consider in redistricting is the one of fairness. We are very concerned that we count prisoners fairly in New Jersey, and that means we should be counting incarcerated people as residents of their home communities and not in the communities where they are incarcerated.

*We wish the Commission had considered this issue of fairness before now, but we want to make you aware, on record, that clustering prisons together for redistricting purposes violates the principle of "one person, one vote." Given this, the Commission should treat the addresses of incarcerated people as unknown until you can solve this problem of unfairness.

*As soon as data are released, the Alliance will be readjusting the population totals to address this issue, and we are happy to work

with you to ensure a fair count. [We are determined to see that New Jersey be freed of the democracy-undermining effects that are inherent in Prison Based Gerrymandering. Do not continue to grant extra voting power to a few communities on the backs of all other residents of this state. Our neighbors New York and Delaware along with Maryland have ended this practice. We trust that New Jersey will as well.]