

**New York State Senate Majority Conference
Senate Legislative Task Force on
Demographic Research and Apportionment**

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**Testimony of Demos and the Prison Policy Initiative
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On behalf of Dēmos and the Prison Policy Initiative, I'd like to thank the Senate Legislative Task Force on Demographic Research and Apportionment for this opportunity to testify about redistricting reform in New York State. Dēmos is a national, non-profit, non-partisan public policy, research and advocacy organization committed to building an America where democracy is robust and inclusive, with high levels of electoral participation and civic engagement. The non-partisan, non-profit Prison Policy Initiative is the nation's preeminent source of information on the impact of mass incarceration on individuals, communities, and the national welfare. Over the past several years, Dēmos and the Prison Policy Initiative have been working in partnership to highlight and put an end to the inequities of "prison-based gerrymandering" – the practice of miscounting incarcerated individuals as residents of their places of confinement, rather than their home communities. The testimony regarding prison-based gerrymandering is offered jointly by Dēmos and Prison Policy Initiative. The subsequent discussion of legislation on redistricting commissions is submitted solely by Dēmos.

Prison-based gerrymandering law

Demos and PPI congratulate the New York Senate and Assembly for passage earlier this year of landmark legislation that ends prison-based gerrymandering in the state. With the signature of Governor Paterson, New York joined Maryland and Delaware in no longer miscounting incarcerated individuals as residents of their prison localities. The prior practice violated Article II, Section 4 of the New York Constitution, which clearly states that "no person shall be deemed to have gained or lost a residence, by virtue of his or her presence or absence ... while confined in any public prison."

New York's prison-based gerrymander also violated the one-person, one-vote principle of our representative democracy. Legislative districts must be of equal population so that the voter strength of a citizen in one district matches that of a citizen in another. Using prison populations to pad the population counts of districts that contain prisons counts allowed New York to draw prison districts with fewer actual residents. The voting strength of each such resident was then greater than that of citizens in districts without prisons. The new policy restores the one-person, one-vote standard.

The previous practice also diluted the voting strength of urban communities of color in New York. Three quarters of our 58,000 prisoners are African American or Latino.¹ Nearly 50 percent come from New York City.² But the prisons in which they are detained are concentrated in predominately rural, white counties. Indeed, each of the 43 new state prisons built in New York since 1976 was built upstate.³ Prison-based gerrymandering diminished the voting strength of the African American and Latino communities from which prisoners were drawn by excluding these tens of thousands of its legal residents from their population counts, while enhancing the voting strength of disproportionately white communities that contain prisons. New York's new policy remedies this vote dilution.

With the end of prison-based gerrymandering, incarcerated people will be properly counted as residents of the communities from which they were drawn and will return after their period of confinement. The proper voting strength of New York's urban communities of color will be restored.

I should note that the negative impact of prison-based gerrymandering was not restricted to urban, of-color communities. The voting strength of residents in any legislative district in the state that did not include a large prison was diminished when other areas could use prison populations to artificially swell their populations. Thirteen counties and municipalities had already recognized the injustice of prison-based gerrymandering and excluded prisoners when they drew local legislative districts. The new law ending prison-based gerrymandering requires that that all state legislative, county and municipal districts be drawn on the same, fair standard.

¹ *Under Custody Report: Profile of Inmate Population Under Custody on January 1, 2010*, Executive Summary, State of New York, Department of Correctional Services, available at http://www.docs.state.ny.us/Research/Reports/2010/UnderCustody_Report.pdf.

² *Id.*

³ *Further research and methodology discussion on Importing Constituents: Prisoners and Political Clout in New York*, Prison Policy Initiative, January 2005, <http://www.prisonpolicy.org/importing/further.html>.

Redistricting by Commission

Dēmos has not taken a position on the redistricting commission legislation recently proposed in the New York State Senate (S.7881A, S.7882A, S.1614B, S.2892, S.6240). However, several years ago, Dēmos and the Center for Governmental Studies in Los Angeles conducted extensive research on redistricting commissions then under consideration in California and elsewhere.⁴ Mindful of the central role that redistricting plays in the vitality of our democracy, we developed the following set of public interest goals that any apportionment commissions should address in drawing district boundaries. Dēmos' 2006 testimony before a joint hearing of the New York Assembly Standing Committee on Government Operation and the Assembly Legislative Task Force on Demographic Research and Apportionment was premised upon these principles.⁵

1. Political Equality and Minority Representation. Every citizen has the right to fair and adequate representation, with particular attention to communities historically underrepresented in the political process and to defined communities of interest.
2. Apportionment Criteria. Those who redistrict should be guided by a properly balanced set of apportionment criteria that promote fairness and advance the public interest.
3. Public Confidence. Apportionment should be undertaken in a manner that elicits full public confidence in the fairness and openness of the process, with transparency in the proceedings of the decision-makers, strong provisions for solicitation and receipt of public input, open meetings, the publication of data and documentation and accessible public hearings throughout the state.
4. Partisan Fairness. Apportionment should proceed through a neutral, unbiased process that aims to ensure that neither major party would benefit unfairly under an adopted redistricting plan.
5. Voter Choice and Government Accountability. Apportionment should result in optimal voter choice in candidates and the ability of the electorate to hold the government accountable.

⁴ *Re-Drawing Lines: A Public Interest Analysis of California's 2006 Redistricting Reform Proposals*, Demos and the Center for Governmental Studies (2006), http://www.cgs.org/index.php?option=com_content&view=article&id=91:PUBLICATIONS&catid=39:all_publications&Itemid=72.

⁵ Assembly Standing Committee on Government Operations, Assembly Legislative Task Force on Demographic Research and Apportionment, Public Hearing, October 17, 2006, Testimony of Steven Carbó, available on request at Dēmos.

Based on these principles, Dēmos offers the following reflections on the pending legislation.

Political Equality and Minority Representation

The opportunity to elect candidates of choice and achieve fair representation in government is a critical component of full participation in our democracy. That ideal has not been achieved in New York, where racial and ethnic minorities have historically been underrepresented in Albany. Drawing district boundaries that facilitate racial and ethnic minorities' ability to elect candidates of choice and achieve political equality are paramount concerns for apportionment reform.

Dēmos recommends that any apportionment proposal adopt the protection of minority voting strength as a state policy priority. The federal Voting Rights Act of 1965 affords special protections to African Americans, Latinos, Asian Americans and Native Americans/Alaskan Natives, whom have experienced intentional disfranchisement, vote dilution and political underrepresentation. That federal protection can be undermined by any change in federal policy or by hostile court decision. Future risks to fair and effective representation to New York's racial, ethnic and linguistic minorities can be averted in part if the state promulgates a state policy against the concentration or dispersal of minority populations in ways that adversely affect their voting strength.

S.7882A and S.1614B both appear to propose that state policy goal. Chairman Dilan's bill prohibits the establishment of Senate, Assembly or congressional districts "that result in a denial to members of racial and linguistic minority groups ... an equal opportunity ... to participate in the political process and to elect the representatives of their choice." Sec. 3(e). That provision also provides that the maintenance of county and village borders, compactness, avoidance of packing multiple incumbents in one district and other redistricting criteria shall be applied in ways that afford fair representation of racial and linguistic minority groups. Similar language is included in S.1614B. See Sec. 96 (2)(C).

I would add that one obvious means of safeguarding minority interests during the deliberations of any proposed redistricting commission is racial and ethnic diversity among commission members. S.1614B, legislation sponsored by Sen. Valesky does require such diversity. It provides that members of the apportionment nominations pool and commission reflect the race, ethnicity, and gender diversity of the state – a clearly advisable approach. See Sec. 95(6), 96(3)(B).

Apportionment Criteria

If a New York apportionment commission were to be created, it should be guided by clear, explicit and priority-ranked public interest criteria. Such articulation will not only assist the commission in the fulfillment of its difficult charge, but will also help assure that redistricting priorities will not be reshuffled dramatically from one decade to the

next depending on the particular interests or preoccupations of those appointed to the commission in a particular decade.

One criteria of particular importance is the preservation of neighborhoods and communities with distinct racial, ethnic, economic, historical and other interests when district lines are drawn, as proposed in S.1614B. Uniting communities of interest is integral to achieving fair representation. It is also a fundamental element in closing the representation gap among New York's racial, ethnic and language minorities. The subordination of this apportionment criterion in S.7882A and S.7881A diminishes its potential impact. See S.7882A, Sec. 3 (f)(v); S.7881A, Sec. 3 (f)(v).

Public Confidence

The current set of redistricting reform bills attempt to instill public confidence in the apportionment process in a number of respects. They include requirements for public access to apportionment plans and other relevant information, public hearings, and reporting on the findings of such hearings. Indeed, whether apportionment is done by the legislature or by commission, such provisions for transparency and access should be part of a properly functioning process.

As regards public hearings, Dēmos finds as commendable the very specific requirements of numerous and geographically-dispersed public forums in S.1614B. Its anticipation of such public hearings during the preparation of the apportionment plan (to be televised) and following its dissemination in each New York City borough and in five other cities are preferable. See Sec. 98 (3),(4). Notice of such public hearings should include efforts to reach language minority communities, using languages beyond English, non-English language media, and outreach to community organizations and resources. Scheduling hearings at accessible locations and at convenient times for working adults can further promote meaningful public participation.

Enhanced reporting requirements can also bolster public participation. Whether apportionment is done by the legislature or by commission, the line drawers can be required to compose transcripts of each public hearing and post them for public review on a commission website; publish a statement explaining how they met redistricting criteria; and report on how the objections and recommendations offered by the public had been taken into consideration. These provisions promote confidence in the integrity of the process. This information should be made available to the public in print and electronic form on the internet.

Provisions regarding public access to apportionment plans and other relevant information are also superior in S.1614B. It requires that all apportionment plans, relevant data and information, and mapmaking software be made available to the public in both printed form and on the internet, using the best available technology. See Sec. 97 (9). I would add that complete or partial plans crafted by the public should also be posted on the internet for discussion at public hearings.