



**New York State Legislative Task Force on  
Demographic Research and Reapportionment**

**Public Hearing  
September 21, 2011**

**Testimony of Dēmos  
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On behalf of Dēmos, I'd like to thank the Legislative Task Force on Demographic Research and Reapportionment (LATFOR) for this opportunity to testify about reapportionment 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. Over the past several years, Dēmos has been working to highlight and put an end to the inequities of so-called "prison-based gerrymandering" – the practice of miscounting incarcerated individuals as residents of their places of confinement, rather than their home communities. We were actively engaged in supporting the landmark, prison-based gerrymandering legislation enacted by New York in 2010. Attorneys at Dēmos are now co-counsel for the Intervenor-Defendants in *Little v. LATFOR*, the lawsuit filed in Albany County to block implementation of New York's prison-based gerrymandering statute. I will address my remarks today to the new law.

With New York's enactment of legislation last year to end "prison-based gerrymandering," the state placed itself at the forefront of a growing trend to correct an undemocratic practice that has distorted the one-person, one-vote principle upon which our republic was founded. Maryland and Delaware adopted similar legislation last year, the California legislature is awaiting the governor's signature on a prison-based gerrymandering bill, and legislative proposals are being actively considered in several other states. We will also continue our efforts to encourage the U.S. Census Bureau to amend the national count of incarcerated individuals in the 2020 decennial census.

Simply put, Part XX of Chapter 57 of the Laws of 2010 is now the law and must be followed by LATFOR. But I would like to take this opportunity to restate the public policies that drove the state to change its prior practice – policies that are as compelling today as they were when New York' prison-based gerrymandering legislation was being considered.

First, the prior miscount of incarcerated individuals conflicted with Article II, Section 4 of the New York Constitution, which clearly states that a prison cell is not a residence: "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.” Part XX provides that such persons will henceforth be counted for reapportionment purposes at their home addresses.

Second, the statute corrected a gross distortion of the fundamental, one-person, one-vote principle upon which our democracy is based. Before the law was changed, legislative districts drawn to include incarcerated individuals gave enhanced representation to those localities that contained prisons by inclusion of those non-resident persons. Such padding of the local head count created under-populated districts where the relative voting strength of each legal resident was greater than it would and should otherwise have been.

The reapportionment plan adopted after the 2000 decennial census illustrates the point. A 62-seat state senate required that districts be drawn with 306,000 constituents each, on average. But inclusion of incarcerated persons in local districts resulted in substantial mal-apportionment. So, for example, inclusion of persons confined at the Clinton Correctional Facility and other prisons lead to upstate Senate District 45 containing only 285,442 legal, non-incarcerated persons. Adjacent Senate District 43, where no prison was located, was drawn with 302,261 constituents.<sup>1</sup> The prison gerrymander unfairly diminished the voting strength of each resident in Senate District 43 and all other districts without prisons. In all, seven senate districts only met minimum population requirements by misclaiming incarcerated individuals as local residents. Part XX restores the one-person, one vote rule.

Third, it is important to note that incarcerated persons remain connected to and a part of their home communities, to which most return. They are only temporarily away. The average length of incarceration in New York State is less than 26 months. They are incarcerated at their current facilities for just over 7 months, on average.

Conversely, incarcerated persons typically have no ties or interests in common with the location where they happen to be incarcerated. They can not be described as “constituents” of those places in any meaningful sense of the word. As Essex County concluded in 2003 when it chose to exclude incarcerated persons in the population base when apportioning the Essex County Board of Supervisors,

“Persons incarcerated in state and federal correctional facilities live in a separate environment, do not participate in the life of Essex County, and do not affect the social and economic character of the towns in which ... the correctional facilities ... are located.”<sup>2</sup>

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<sup>1</sup> See Prison Policy Initiative, *District 45 Profile*, [http://www.prisonersofthecensus.org/factsheets/ny/district\\_45\\_profile.pdf](http://www.prisonersofthecensus.org/factsheets/ny/district_45_profile.pdf).

<sup>2</sup> Essex County Local Law No. 1 [2003].

Fourth, New York's decision to end prison-based gerrymandering was consistent with local practices. Thirteen counties with large prisons had already removed the prison population from local resident counts when drawing local legislative districts (Cayuga, Chemung, Clinton, Dutchess, Essex, Franklin, Greene, Orange, Orleans, Schoharie, Sullivan, Washington, and Wyoming). They recognized that incarcerated individuals could not reasonably be considered local residents, and that including them when reapportioning locally would have led to undemocratic and at times absurd results. Most of the "residents" in one district in Franklin County could have been comprised of incarcerated persons had the county included incarcerated populations in local redistricting after the 2000 decennial census.<sup>3</sup> Incarcerated persons now represent 49 percent of the constituents in one city council ward in Rome, NY after that city chose not to exclude the persons incarcerated at two correctional facilities in drawing its Common Council districts.<sup>4</sup> Reviving prison-based gerrymandering, as the plaintiffs in *Little v. LATFOR* request, will force absurd results like these on county and local governments.

Fifth, refusing to follow the law and continuing prison-based gerrymandering in the current round of reapportionment would deny New York's communities of color the great civil rights victory they secured with enactment of the prison-based gerrymandering legislation. Districts with higher rates of incarceration that are not properly credited for all its residents suffer higher rates of voting strength diminution.

That diminution is most pronounced in the state's African American and Latino communities, from which most of the New York prison population is sadly drawn. Three quarters of our 58,000 prisoners are African American or Latino.<sup>5</sup> Nearly 50 percent come from New York City.<sup>6</sup> But the prisons in which they are detained are concentrated in predominately rural, white counties. Each of the 43 new state prisons built in New York since 1976 was built upstate.<sup>7</sup> Prison-based gerrymandering diminished the voting strength of the African American and Latino communities from which prisoners were drawn by excluding tens of thousands of its legal residents from their population counts, while enhancing the voting strength of the

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<sup>3</sup> Prison Policy Initiative, Fact Sheet: *Thirteen Counties Reject Prison-Based Gerrymandering*, <http://www.prisonpolicy.org/importing>.

<sup>4</sup> Prison Policy Initiative, Fact Sheet: *Prison-Based Gerrymandering in the City of Rome*, [http://www.prisonersofthecensus.org/factsheets/ny/city\\_of\\_rome.pdf](http://www.prisonersofthecensus.org/factsheets/ny/city_of_rome.pdf).

<sup>5</sup> *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](http://www.docs.state.ny.us/Research/Reports/2010/UnderCustody_Report.pdf).

<sup>6</sup> *Id.*

<sup>7</sup> *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>.

disproportionately white communities that contain prisons. New York's new policy remedies this problem, restoring the proper voting strength of New York's urban communities of color.

I will close by noting that Part XX can be implemented without complication. As was reported in at LATFOR's September 7, 2011 meeting in Queens, NY, Assembly staff was able to use information provided by the Department of Correction Services and the U.S. Census Bureau to determine the proper home addresses of most incarcerated persons in their first pass at implementing the law. Dēmos urges the Senate majority to work cooperatively with its Assembly colleagues to closely review all available data, call upon experts in the field for assistance as necessary, and make maximal efforts to determine and apply the home addresses of incarcerated persons in this current round of reapportionment. As the law provides, those persons whose prior address was out-of-state or unknown will simply be removed from the population counts of prison localities. They will however be counted as part of the total statewide population, for purposes of apportioning congressional representation among the states. In doing so, New York will treat incarcerated persons whose home addresses could not be obtained much like overseas federal employees. They are counted as residents of their home states for statewide population totals, but are not allocated to individual districts within the states.