

**Testimony of
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Legislative Task Force on Demographic Research and Reapportionment
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I. Introduction

Good morning. My name is Erika Wood and I am the Deputy Director of the Democracy Program at the Brennan Center for Justice at NYU School of Law where I also direct our Redistricting and Representation project. I would like to thank Senator Dilan, Mr. Flateau and the Legislative Advisory Task Force on Demographic Research and Reapportionment (LATFOR) for holding this hearing today and inviting me to testify.

The Brennan Center is a nonpartisan public policy and legal advocacy organization that focuses on the fundamental issues of democracy and justice. The Center's Democracy Program promotes reforms that foster full and equal political participation and responsive and responsible governance. While our work to eliminate barriers to effective voter participation occurs nationwide, we are based in New York, and have been deeply involved in efforts to improve our government and election administration. In particular, the Brennan Center has been at the forefront of research on redistricting procedures, both in New York and across the country. We have extensively studied redistricting practices nationwide, analyzed both successful and unsuccessful attempts at redistricting reform, and produced materials to educate the public about the benefits and consequences of various redistricting methods. We have testified with respect to proposed redistricting legislation, and assisted advocates and elected officials in drafting such legislation. In addition, we have participated as amicus curiae in many of the major cases addressing the use of redistricting for partisan gain or at the expense of minority voters.

In 2006, my colleagues at the Brennan Center testified before the Assembly Legislative Task Force and outlined some broad principles for reform of the redistricting process in New York.¹ With one important exception, the issues discussed in that testimony remain relevant today and we encourage you to review it as you consider this important issue. A copy is attached for your reference and for the record.

The New York redistricting process remains substantially flawed. To a great extent, the process remains closed and secret with no opportunity for public engagement or requirement that the Task Force explain its decisions, or even present them to the public prior to finalization. There is also no requirement that the Task Force recognize communities of interest as it draws districts, beyond the protections the Voting Rights Act provides for certain minority communities.

Today my testimony will focus on a central theme: assuring that the redistricting process is open and transparent, and that it recognizes and is accountable to real communities so that those communities are fairly represented in our government.

I mentioned that there was one important exception to the relevance of our 2006 testimony, and that is the issue of where people in prison will be allocated for the upcoming round of redistricting. In August this year, the legislature passed and the Governor signed into law new legislation that requires LATFOR to allocate people in prison to their home communities rather than where they are incarcerated. We are very pleased that the problem of prison-based gerrymandering has been addressed and we hope it will now become part of New York's past. This is an issue the Brennan Center has worked on for many years, and we congratulate the legislature for passing this important reform. In 2011, people in prison will finally be counted in their home communities. This will end the false inflation of prison districts and assure that the home communities, predominantly poor and minority, are fairly apportioned. We support this reform and we encourage its preclearance under Section 5 of the Voting Rights Act.

II. The Redistricting Process Should Be More Open and Transparent

For communities of all kinds to be fairly represented in our government, the redistricting process must be accountable to the communities being represented. This cannot happen unless the process is open, accountable, and allows for public engagement. To draw districts that represent real communities, LATFOR must hear from those communities, and consider community input as to how they identify, how they define the values they share, and how they bind together to share a voice and be represented in government. To this end, LATFOR should share draft plans with the public, hear comments, answer questions and explain its decisions.

¹ See Justin Levitt & Kahlil Williams, Testimony Before the Assembly Standing Committee on Governmental Operations and the Assembly Legislative Task Force on Demographic Research and Reapportionment (Oct. 17, 2006), attached and available at http://www.brennancenter.org/page/-/d/download_file_38908.pdf

We commend you for holding this hearing; today is certainly an important first step in opening up the redistricting process. But it is only one step. New York's redistricting process is notoriously marked by backroom negotiations among elected officials. The public is largely shut out of the process. This must change if this cycle of redistricting is going to assure that all communities are fairly represented in our government

Across the country and here in New York, there is broad and consistent demand to increase transparency in the redistricting process. In 2010, a federal bill was introduced to open this process up to the public. Several states have already taken various steps in that direction on their own. In 2002, at least 26 states made demographic or political data available and accessible, and at least 18 provided public access to computers or redistricting software that might otherwise cost thousands of dollars. Many states hold public hearings and some accept potential maps from the public.²

To increase transparency and encourage public engagement, we recommend:

1. **Conduct at least ten public hearings.** In a state as populous and diverse as New York, there should be a minimum of ten public hearings in different parts of the state. Two hearings should occur well before plans are being developed, and at least two should occur after a proposed plan has been developed, but before it has been submitted to the legislature. The public should be given the opportunity to observe the hearings over the internet if in-person attendance is not possible, and minutes or a transcript of the hearing should be available and accessible.
2. **Provide adequate notice.** The schedule for plan development should be made public, including the days on which hearings will occur. The public should be given sufficient notice in advance of any hearing, and be offered various opportunities to participate. When a detailed version of the proposed final plan is available, the public should be promptly notified and provided access to the plan.
3. **Make data available.** All data used in the redistricting process for the development of a proposed map should be made available and accessible to the public with ample time for that information to be utilized by the public in advance of the final two hearings.
4. **Consider maps and comments made by the public.** Members of the public should be encouraged to submit maps and comments, and those maps and comments should be made available to the public through the internet. There should be sufficient time in between when a proposed map is made available to the public and when a map is presented to the legislature for due consideration to be given to any map or comment made by the public.

² See generally Justin Levitt, *A Citizen's Guide to Redistricting* 41 (2010 ed.) available at www.brennancenter.org/redistricting.

III. Districts Should Represent Real Communities

District lines can keep people with common interests together or split them apart. Depending on which people are bundled together in a district, the district lines can make it much easier or much harder to elect any given representative, or to elect a representative responsive to any given community. Together, the district lines have the potential to change the composition of the legislative delegation as a whole.

The Brennan Center believes that to ensure all New Yorkers are fairly represented in our government the redistricting process must recognize and be accountable to real communities. Communities can take on many different forms and can be defined, both by description and boundary, in myriad ways. But every community has some shared interest – and it should be the members of that community who decide what that is, not legislators in a back room cherry picking their constituents, looking for donors or carving out challengers. Lines should be drawn so that real communities are kept together, to share common values and assure that those values are fairly represented in our government.

Nearly half of the states around the country have redistricting criteria which include consideration of communities of interest for state legislative districts.³ In fact, communities of interest are at the heart of many of the other traditional redistricting rules: a decision to keep a city together, or to keep a compact group of voters together, is often a proxy for ensuring that people with common interests are grouped within the same district.

When a community of interest is a racial or language minority, a particularly delicate legal balance is required: essentially, states must account for race in some ways, but may not do so “too much.” The Supreme Court has interpreted the federal Constitution to require a particularly compelling reason before a state can make the race or ethnicity of citizens the “predominant” reason for drawing particular district lines.⁴ The Supreme Court has also repeatedly implied that one such compelling reason is compliance with the federal Voting Rights Act.⁵

New York’s changing racial and ethnic demographics make it imperative that LATFOR and legislators pay close attention to newly-formed communities of interest, and respect the integrity of established communities protected by the Voting Rights Act.

³ Twenty-four states currently ask their redistricting bodies to consider various types of communities of interest in drawing district lines. For a list of the states and a summary of the provisions, see http://brennan.3cdn.net/49ac58799edcac54d2_q6m6bxsac.pdf

⁴ *Bush v. Vera*, 517 U.S. 952, 958-59, 962-64 (1996) (plurality opinion); *see also* *Shaw v. Reno*, 509 U.S. 630 (1993); *Miller v. Johnson*, 515 U.S. 900, 916 (1995).

⁵ *See* *King v. Ill. Bd. of Elections*, 979 F.Supp. 619, 621-22 (N.D.Ill.1997), *aff’d*, 522 U.S. 1087 (1998); *see also* *Shaw*, 509 U.S. at 653-54; *Vera*, 517 U.S. at 990, 994 (O’Connor, J., concurring); *League of United Latin American Citizens (LULAC) v. Perry*, 548 U.S. 399, 475 (2006) (Stevens, J., concurring in part and dissenting in part).

Accordingly, we recommend:

1. **Preserve communities of interest.** New York should join many other states and prioritize the protection of communities of interest among the criteria it employs to draw legislative districts.
2. **Engage the public.** The public has long been shut out from the redistricting process, resulting in unsurprising cynicism and disinterest. To counter this, we encourage aggressive and affirmative efforts to encourage public participation. Specifically, the public should be encouraged to testify as to relevant community boundaries, to ask questions about and submit comments on proposed maps, and even to submit their own maps for consideration.
3. **Identify and map local communities.** Communities of interest can be difficult to identify concretely. We encourage LATFOR, with assistance and input from various communities, to map local communities that should be kept together within a district. If a sizable community prefers to be split in order to influence a larger number of representatives, the Task Force should seek input as to where the most appropriate splitting point is.
4. **Protect minority communities.** The Voting Rights Act imposes certain obligations on the states to protect the voting rights of racial and language minorities. Those obligations must be met. Moreover, states can determine, subject to constitutional limits, that there are good policy reasons for keeping whole certain language and racial communities. We encourage the legislature and the Task Force to explore the legal options for assuring that minority communities are protected and represented in the redistricting process.
5. **Explain proposed district boundaries.** Complicated district shapes attract much attention and can call into question the fairness of the redistricting process. Explaining why a map was drawn a certain way, or why one map was chosen over the alternatives, will both educate the public as to the trade-offs required in the redistricting process, and hold line drawers accountable for their actions. The explanation should identify communities affected by application of or deviation from other redistricting criteria.

Conclusion

These reform goals reinforce: a truly representative outcome will only come if the redistricting process is open and transparent, allowing for public engagement. Thank you again for holding this hearing today, and for inviting us to testify. I am happy to answer any questions you have, and we stand ready to assist you as the redistricting process moves forward.