

**Testimony of Myrna Pérez**

**Brennan Center for Justice at NYU School of Law**

**Before the  
New Jersey Apportionment Commission  
February 13, 2011**

**Introduction**

Good afternoon. My name is Myrna Pérez and I am a lawyer in the Democracy Program at the Brennan Center for Justice at NYU School of Law. I am also a resident of Jersey City. I would like to thank Assemblymembers Webber and Wisniewski and the rest of the Commissioners for holding this hearing today and considering my testimony.

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. Our work to eliminate barriers to effective voter participation occurs nationwide and we have been at the forefront of research on election and voting procedures 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 in hearings 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.

My testimony today will focus on three areas: (1) the need to make the redistricting process more open and transparent; (2) the importance of recognizing and preserving communities of interest in New Jersey, and (3) the importance of assuring that racial and language minorities have an equal opportunity to elect their candidates of choice.

## **I. New Jersey's 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, transparent, and allows for public engagement. To draw districts that represent real communities, the Apportionment Commission must hear from those communities, and consider their 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, the Apportionment Commission should explain the criteria used to draft the map, share draft plans with the public, hear comments, answer questions and explain its decisions.

We commend you for holding this and previous hearings. But this is only one step in opening up the redistricting process. Across the country and here in New Jersey, 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.

To increase transparency and encourage public engagement, we recommend that this Commission:

- 1. Conduct at least four more public hearings.** In a state as populous and diverse as New Jersey, there should be ample public hearings in different parts of the state, including the shore towns. At least two should occur after a proposed plan has been developed, but before it has been certified. At your organizational meeting on January 18th, it was proposed that each meeting would be recorded and transcribed. However, since that meeting, only one recording has been made available on your website.
- 2. Provide adequate notice.** We are pleased to see that the hearing dates and general redistricting schedule are available on the Commission's website. We recommend that the schedule for plan development also be made public. When a detailed version of the proposed final plan is available, the public should be provided access to the plan – before it is certified – so that it can be revised if necessary.
- 3. Make data available.** Beyond just a link to the U.S. Census Bureau's website, all data used in the redistricting process for the development of a proposed map should be made available to the public with ample time for that information to be utilized by the public in advance of the final two hearings.
- 4. Consider public maps and comments.** Members of the public should be encouraged to submit maps and comments and those maps and comments should be made public. We are pleased that the Commission has acknowledged the importance of making information available through the internet and allowing the public to submit comments through email. We urge the Commission to take those steps quickly. There should be sufficient time between when a

proposed map is made available to the public and when a plan is certified to allow community input.

5. **Explain your reasoning.** Though the Apportionment Commission will not be able to respond to each public comment after the plan is certified, the Commission should explain why it drew the map that it did. Not only will this allow the public to evaluate the decision making process, but will also help citizens to understand why their suggestions were not followed by the Apportionment Commission.

## II. 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. The Brennan Center believes that to ensure that all New Jerseyans are fairly represented in our government, the redistricting process must recognize, preserve, and be accountable to real communities, or “communities of interest.”

Communities of interest can take on many different forms and can be defined, both by description and boundary, in myriad ways. The Alabama legislative guidelines define a community of interest as an: “area with recognized similarities of interests, including but not limited to racial, ethnic, geographic, governmental, regional, social, cultural, partisan, or historic interests; county, municipal, or voting precinct boundaries; and commonality of communications.”<sup>1</sup> In Montana, where redistricting is also done by a commission, the commission guidelines explain that “communities of interest can be based on Indian reservations, urban interests, suburban interests, rural interests, neighborhoods, trade areas, geographic location, communication and transportation networks, media markets, social, cultural and economic interests, or occupations and lifestyles.”<sup>2</sup>

“Communities of interest” should not be viewed as “special interests.” Nearly half the states around the country have redistricting criteria which include consideration of communities of interest for state legislative districts, some expressly set forth in their state constitution. Preserving communities of interest has long been recognized as a traditional districting criterion by the Supreme Court, and is a redistricting criterion even older than the Voting Rights Act.<sup>3</sup> In fact, the principle of communities of interest forms the basis of many of the other common redistricting criteria: a decision to keep a municipality together, as is required by New Jersey in almost all instances, 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.

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<sup>1</sup> ALA. PERM. LEGIS. COMM. ON REAPPORTIONMENT, REAPPORTIONMENT COMMITTEE GUIDELINES FOR LEGISLATIVE, STATE BOARD OF EDUCATION, AND CONGRESSIONAL REDISTRICTING, <http://www.legislature.state.al.us/reapportionment/Guidelines.html>.

<sup>2</sup> MONT. DISTRICTING AND APPORTIONMENT COMM’N, CONGRESSIONAL AND LEGISLATIVE REDISTRICTING CRITERIA (May 28, 2010), [http://leg.mt.gov/content/Committees/Interim/2009\\_2010/Districting/Other Documents/0148LJFcorrectedcriteria.pdf](http://leg.mt.gov/content/Committees/Interim/2009_2010/Districting/Other Documents/0148LJFcorrectedcriteria.pdf)

<sup>3</sup> See, e.g., *Burns v. Richardson*, 384 U.S. 73 (1966); *Davis v. Mann*, 377 U.S. 678 (1964).

To identify communities of interest, we recommend that this Commission:<sup>4</sup>

**1. Call upon the public.** Community members are best equipped to educate and inform this Commission through testimony and comments about their communities of interest. Specifically, the public can and should provide qualitative information about their communities by describing: (a) *physical boundaries* of their communities of interest, including specific streets or other borders, and the relevance of significant places in the community like cultural centers, parks, shopping centers, and other buildings that would serve as landmarks or meeting centers; (b) *commonalities in socio-economic status* like use of media and production and consumption habits, (c) *commonalities in political or representative interests*, like common concerns about crime, the environment, health conditions, or schools, (d) *the existence of community-wide social networks*, like religious activities, parades or festivals, or hosting public concerts or performances, or (e) *common risks*, like environmental dangers or political concerns of the communities.

**2. Enlist the data experts.** Demographers, political scientists, historians, and other experts should also be asked to provide data and information on the parameters of particular communities of interest. The census also provides relevant secondary information on socio-economic status which can help identify a community of interest, for example, *income, education, homeownership, language, media markets, and transportation*.

**3. Work with community organizations.** Community organizations can also provide useful analysis for identifying communities of interest by providing information similar to those provided by public testimonials, only with a broader view. Specifically, organizations can describe: (a) *physical boundaries* of a community of interest as informed by their service or membership base, (b) *commonalities in socio-economic status* like connections to the economy, (c) *commonalities in political or representative interests* as demonstrated by public engagement, like community protests or community meetings, (d) *the existence of community-wide social networks and resources*, and (e) *common risks*.

To recap, the Commission should identify communities of interest, by considering:

- known and agreed upon boundaries;
- demonstrated commonalities in income, education, homeownership, language, media markets, transportation, religion;

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<sup>4</sup> Much of the following analysis is derived from: CAROL OJEDA-KIMBROUGH, EUGENE LEE & YEN LING SHEK, UNIV. OF CAL. ASIAN AM. AND PAC. ISLANDER POLICY MULTI-CAMPUS RESEARCH PROGRAM & UCLA ASIAN AM. STUDIES CTR., THE ASIAN AMERICANS REDISTRICTING PROJECT: LEGAL BACKGROUND OF THE “COMMUNITY OF COMMON INTEREST” REQUIREMENT (July 2009), [http://www.aasc.ucla.edu/policy/CCI\\_Final%20Final%20Final.pdf](http://www.aasc.ucla.edu/policy/CCI_Final%20Final%20Final.pdf); CAL. COMMON CAUSE, CALIFORNIA’S NEW REDISTRICTING COMMISSION (January 2011), <http://www.redistrictingca.org/wp-content/uploads/2009/12/REdistrictingca-Brochure.pdf>; NAACP LEGAL DEF. AND EDUC. FUND, INC., ASIAN AM. JUSTICE CTR. & MEXICAN AM. LEGAL DEF. AND EDUC. FUND, THE IMPACT OF REDISTRICTING IN YOUR COMMUNITY: A GUIDE TO REDISTRICTING (Aug. 25, 2010), <http://naacpldf.org/files/publications/Impact%20of%20Redistricting%20in%20YOUR%20Community%202010.pdf>; BRENNAN CTR. FOR JUSTICE, “COMMUNITIES OF INTEREST” IN STATE REDISTRICTING LAW (Apr. 25, 2008), <http://www.brennancenter.org/page/-/commentary/Communities%20of%20Interest.pdf>.

- evidence of shared political or representative interests, for example, common concerns about crime, the environment, health conditions or schools;
- the relevance of significant places in the community like cultural centers, parks, shopping centers, and other buildings that would serve as landmarks or meeting centers, and
- the existence of shared public endeavors, like holding parades or festivals, hosting of races or concerts, or public performances.

New Jersey's changing racial and ethnic demographics make it imperative that the Apportionment Commission pays close attention to newly-formed communities of interest.

### **III. Adhere to the Voting Rights Act**

Other witnesses before the Commission have discussed the Voting Rights Act, so I will be brief. The Voting Rights Act imposes certain obligations on the states to protect the voting rights of racial and language minorities, including in the redistricting process. This Commission should pay special attention to Section 2 of the Voting Rights Act, which, among other things, protects against depriving minority voters of an equal opportunity to elect a candidate of their choice. When this Commission draws lines, they must ensure that the redistricting plan does not dilute minority voting strength or the plan will be in violation of the Voting Rights Act. There are legal principles for determining when vote dilution has occurred, set forth in the seminal case *Thornburg v. Gingles*, authored by one of our country's greatest legal thinkers, the namesake for my place of employment, and a New Jersey native, Justice William Brennan.<sup>5</sup> The 2009 Supreme Court decision in *Bartlett* clarified when states are required to create majority-minority districts under the Act but it should not be forgotten that any state, even when not required to create new majority-minority districts to avoid dilution, is permitted to do so provided that race is not an unjustifiably predominant factor in the redistricting process.<sup>6</sup> We encourage the legislature and the Apportionment Commission to explore the legal options for assuring that minority communities are protected and represented in the redistricting process and the resulting plan.

### **Conclusion**

These recommendations reinforce three themes: (1) a truly representative outcome will only come if the redistricting process is open and transparent, allowing for public engagement, (2) redistricting should not be reduced to lines on a map or boundaries of census blocks: instead it should be understood as being about communities and their ability to be represented effectively and fairly, and (3) the obligations to provide racial and language minorities the equal opportunity to elect their candidates of choice are not optional.

Thank you again for holding this hearing today, and for allowing 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.

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<sup>5</sup> 478 U.S. 30 (1986).

<sup>6</sup> *Bartlett v. Strickland*, 128 S.Ct. 1648 (2009).