

Testimony of Dr. Johanna Foster
Member, Integrated Justice Alliance
Before the
Apportionment Commission of New Jersey
January 29, 2011¹

Thank you, members of the Committee for holding this hearing here today. My name is Johanna Foster, and seated with me is my colleague, Mr. Aula Sumbry, and we are members of the Integrated Justice Alliance, a solution-oriented collective of informed, cross-sector partners who advocate for effective public policies before, during, and after incarceration in New Jersey.

We 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,² New York³ and Delaware,⁴ have all passed legislation last year to adjust Census data for redistricting purposes. New Jersey should join them in

¹ This testimony was presented at the 2:30pm public hearing held at the Toms River Municipal Building in Toms River, New Jersey on January 29th, 2011. The same written testimony was read into the record earlier that day at the 9:30am public hearing in Camden, New Jersey, by Mr. Micah Kahn from the Nehemiah Group and with oral testimony by Ms. Gale Mohammad from Women Who Never Give Up, both members of the Integrated Justice Alliance of New Jersey.

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 this direction. New Jersey law requires school board districts to exclude the prison population when apportioning school boards that have 9 or more members.⁵ 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.⁶

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. I will now turn to my colleague, Mr. Aula Sumbry for some additional closing remarks.

² HB496 and SB400, 2010 Leg., Reg. Sess. (Md. 2010).

³ Part XX of A9710D/S6610C with technical amendment as A11597/S8415, 2010 Leg., Spec. Sess. (N.Y. 2010).

⁴ HB384, 145th Gen. Assem., Reg. Sess. (Del. 2010).

⁵ N.J.S.A. 18A:13-8; Board v. New Jersey 2004 N.J. Super. LEXIS 361.

⁶ 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"

