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LATINOJustice
PRLDEF



July 27, 2011

Via E-mail and Regular Mail

Members

NYS Legislative Task Force on Demographic Research and Reapportionment
250 Broadway, Suite 2100
New York, NY 10007

Re: LATFOR Non-compliance with Part XX of Chapter 57 of the Laws of New York

Dear Assemblymen McEneny and Oaks; Senators Dilan and Nozzolio; and Messrs. Hedges and Lopez:

We write on behalf of the Brennan Center for Justice at NYU School of Law, the Center for Law and Social Justice at Medgar Evers College, Dēmos, LatinoJustice PRLDEF, the NAACP Legal Defense and Educational Fund, Inc., the New York Civil Liberties Union, and the Prison Policy Initiative to express our concern about the intentions of Legislative Task Force on Demographic Research and Reapportionment (“LATFOR”) regarding Part XX of Chapter 57 of the Laws of New York (“Part XX”). The LATFOR public meeting on July 6, 2011 left the issue unsettled, and several media reports have suggested that LATFOR does not intend to comply with the Law.¹ We are hopeful that this is not the case.

As you know, Part XX is an enacted and valid law of the state of New York. Thus, LATFOR has a duty to follow the law as it currently stands. Absent any temporary restraining orders, preliminary injunctions, or other court orders to enjoin compliance with this law, not at

¹ See, e.g., *What Happened to the Promise?*, The Times Union, July 10, 2011, <http://blog.timesunion.com/opinion/what-happened-to-the-promise/12917/>, *New Districts Won't Change Prisoner Count, Task Force Says*, North Country Public Radio July 7, 2011, <http://www.northcountrypublicradio.org/news/story/17973/new-districts-won-t-change-prisoner-count-task-force-says>, Casey Seiler, *For Now, Redistricting Panel will Ignore Convict Change*, The Times Union: Capitol Confidential, July 6, 2011, <http://blog.timesunion.com/capitol/archives/73848/for-now-redistricting-panel-will-ignore-convict-change/>.

issue here, Part XX requires observance. Should a court order enjoin the enforcement of this law, then the issue at hand can be reexamined. As it currently stands, however, Part XX is binding. Failure to comply promptly with the law's requirement that incarcerated persons be reallocated for purposes of redistricting would be a serious violation of legal obligations. It would also gravely infringe upon the voting rights of New York's citizens for which you could be held accountable.

We understand LATFOR has already received from DOCCS the information needed to make the reallocation required by Part XX and redraw the district lines accordingly.² We respectfully insist you to do so immediately.

Part XX protects critical voting rights by remedying the unfairness of the prior method of allocating incarcerated persons to the district in which they were incarcerated. That method artificially inflated the political influence of districts with prisons to the detriment of districts with no or fewer prisons. It also diluted the voting rights of citizens of the districts in which the incarcerated persons previously resided. This phenomenon had a disproportionate and discriminatory impact on the voting rights of the minority and low income voters who made up a substantial portion of the residents of these districts.³ The earlier method of allocation was also inconsistent with the principle reflected in Article II, Section 4 of the Constitution that the residence of incarcerated persons for voting purposes is not affected by their confinement in prison.⁴ Such legal requirement makes practical sense given that the median length of total time served in custody by inmates is 25 months,⁵ and the median length of stay for an incarcerated person at any one prison is only 7.1 months.⁶

We strongly urge that LATFOR develop its statewide redistricting lines with the allocation of incarcerated persons to their addresses of previous residence. Please respond to our letter in writing by Friday, August 12, 2011 about whether and how you will comply with Part XX.

Thank you very much for your attention to this matter.

² See Answer of Def. DOCCS, at 4. It should be noted that this stands contrary to LATFOR's claim that DOCCS has actually failed to supply such information. See Pls.' Aff. In. Opp., para. 29.

³ See Proposed Intervenor-Defs.' Notice of Mot. to Intervene, at 2.


⁴ See N.Y. Const. Art. II, § 4.

⁵ *Under Custody Report: Profile of Inmate Population Under Custody on January 1, 2011*, State of New York Department of Corrections and Community Supervision (Apr. 2011), p. 17, available at http://www.docs.state.ny.us/Research/Reports/2011/UnderCustody_Report.pdf.

⁶ *HUB SYSTEM: Profile of Inmate Population Under Custody on January 1, 2008*, State of New York Department of Correctional Services (Mar. 2008), p. 38, available at http://www.docs.state.ny.us/Research/Reports/2008/Hub_Report_2008.pdf [accessed May 2, 2011]. The median time to the earliest potential release date was only 15 months. *Id.* at 18.

Sincerely,

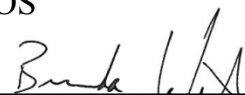
BRENNAN CENTER FOR JUSTICE
at New York University School of Law


By: Wendy Weiser, Esq.

CENTER FOR LAW & SOCIAL JUSTICE:


By: Esmeralda Simmons, Esq.

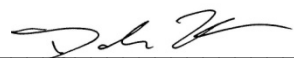
DĒMOS


By: Brenda Wright, Esq.

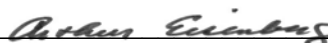
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NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC.:


By: Dale E. Ho, Esq.

NEW YORK CIVIL LIBERTIES UNION FOUNDATION


By: Arthur Eisenberg, Esq.

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