

**Statement of Standards of the 11th Member of the New Jersey
Legislative Apportionment Commission**

January 7, 2022

The Commission has requested that I outline and describe the standards that will inform my vote on the final legislative map. Before addressing the standards individually, however, I want to share some general observations about the apportionment process and the array of applicable standards.

Apportionment is a complex undertaking, which requires harmonizing competing factors. At its core, apportionment is about the public interest, drafting a map that fairly represents the people of the State of New Jersey. My view is that the Commission cannot look only to the past to draw a new map but also must look at the present - to how New Jersey has changed over the past decade - and towards the future - to how the new map will represent the population of our ever-changing State.

We must recognize the demographic changes that have shaped New Jersey over the past ten years. Although there are many, I highlight two: (1) New Jersey's population shift from south to north, and (2) the increase in New Jersey's minority population. The present minority population of New Jersey, collectively, approximates 48%. Both changes must impact this apportionment cycle.

One other change bears mentioning. Recent legislation requires that incarcerated individuals shall be deemed residents

of their home districts, not the district of their place of incarceration.

With regards to apportionment standards, the Constitution of the United States mandates that New Jersey's forty districts must be of near-equal size in population, our State Constitution requires the districts be compact, contiguous, and preserve municipal boundaries, and the map must comply with Section 2 of the federal Voting Rights Act of 1965. The remaining standards – recognition of communities of interest, competitiveness, continuity of representation, and partisan fairness – while not constitutionally mandated, have been recognized as integral to the drafting and evaluation of a viable map. Critically, however, the remaining standards allow for some discretion in their application.

I view each of these standards as necessary to my role, but I recognize that the standards may be weighed and valued, in their application, differently by different people. While some may view the standards as separate and discrete, I see them as integrated, so that no one standard can dominate to the exclusion of the others. Tensions exist between some of the standards, but no absolutist view of one standard can negate the application of the other standards. I view my charge as the 11th member of this Commission to apply the standards, without reference to partisanship, to ensure that our next legislative

map best reflects the people of New Jersey of 2022 and for the next decade.

It is with these thoughts in mind that I address each standard individually, starting with the constitutional requirements:

Equal Population

As I noted earlier, the United States Constitution requires that each of the proposed districts be of equal population to ensure that each vote carries the same weight. "One person, one vote" is the central tenet of the apportionment process.

According to the latest census, the population of New Jersey is 9,283,016 (this does not include 5,978 people indicated as residing at an unknown location), and, therefore, each of the required forty legislative districts should have a population of approximately 232,075 people. Recognizing that it is virtually impossible for each district to be identical in population, the law permits a deviation of up to 5%, that is, 2.5% above and 2.5% below the required district size. Districts should be drawn to achieve that result. Some federal case law has been tolerant of a greater deviation, but, absent extraordinary circumstances, we should adhere to a 5% deviation.

Municipal Boundaries

With the exception of Newark and Jersey City, whose populations exceed that of a single legislative district, municipalities cannot be split among districts.

Contiguity

The New Jersey Constitution requires that the districts be contiguous; they must be connected. Although, this may present some challenges where municipalities are separated by waterways or major highways, I do not see this as an impediment to appropriate district configuration. All legislative districts, therefore, should be contiguous.

Compactness

The State Constitution also requires legislative districts to be as compact as possible. This standard presents a greater challenge than contiguity because the requirement to preserve municipal boundaries will result in some irregularly shaped districts. This standard should be adhered to as long as it does not adversely impinge on the other apportionment standards.

Section 2 of the Voting Rights Act

Of particular importance to New Jersey and its growing minority population, Section 2 of the Voting Rights Act of 1965 prohibits voting practices that result in citizens being denied equal access to the political process on account of race, color, or membership in a language minority group. Section 2 also prohibits adopting or maintaining voting practices for the

purpose of disadvantaging citizens on account of race, color, or membership in a language minority group.

To fulfill New Jersey's obligation under Section 2 of the Voting Rights Act, New Jersey's next legislative map should include opportunity-to-elect legislative districts that provide racial or language minorities a reasonable opportunity to participate in the political process and elect representatives of their choice, either alone or in concert with other voters. Except as otherwise noted, race should be considered only as necessary to comply with Section 2 and should be narrowly tailored to satisfy those mandates.

Communities of Interest

The map should recognize communities of interest, which are neighborhoods, communities, or groups of people who share common values, goals, and concerns - such as cultural, ethnic, linguistic, economic, or religious interests, or shared infrastructure concerns, shared environmental concerns, or shared industry. Communities of interest, however, should not be based on political considerations, such as partisan affiliation or loyalty to a particular incumbent.

The increasing diversity of New Jersey's population makes identification and analysis of communities of interest critical to drafting a legislative map. Based on New Jersey's geographic and demographic diversity, the State's communities of interest

are many. Although the preservation of communities of interest cannot displace mandatory apportionment principles, to the extent possible, districts should be created to preserve communities of interest. Packing or cracking any particular portion of the population should not be done under the guise of creating communities of interest.

Competitiveness

Competitiveness should be applied to ensure that those participating in the political process have a real opportunity to choose a legislator who reflects the will of the voter. But this standard has limitations. Competitiveness in all districts is unrealistic, and other standards, such as equal population, preservation of municipal boundaries, compliance with Section 2 of the Voting Rights Act, and recognizing communities of interest, militate against viewing competitiveness as the dominant standard. The map should strive for competitive districts, but competition should not be used to diminish other standards. Competitiveness should not be applied solely for partisan advantage.

Continuity of Representation

There is a substantial benefit to the citizenry of New Jersey to maintain a modicum of stability in the core of legislative districts. Interaction with legislators and knowing one's legislative district has value and should not be

discounted. District disruptions every ten years do little to further citizen involvement and confidence in the political process. Unless necessary to meet other standards, cores of existing districts should be maintained.

As with competitiveness, continuity of representation should yield if it impairs the application of other standards, and it should be applied without partisan aims. Districts should not be drawn simply for the sake of protecting incumbents. Finally, creating districts where incumbents must compete against each other, unless necessary to meet other standards, should be minimized.

Partisan Fairness

No district, or map, should be drawn solely to favor or disfavor a political party or the election of any person. The parties should be treated fairly and consistent with the other standards. The new map should reflect the demographic changes that have taken place in the past ten years – the increase in total population, the increase in minority population, and the shift of population from the southern part of New Jersey to the north.

Like competitiveness, partisan fairness should not be applied for partisan advantage. That demographic shifts in population may benefit a particular party cannot result from a failure to weigh and consider the other standards. Fairness

requires a map that does not inherently favor one party over the other for the next decade. Fairness also requires a map that includes districts that may shift with changing political tides.

The objective of the apportionment process is to provide a map that is fair to the residents of the State of New Jersey. While political parties may benefit from apportionment, that benefit can only be a byproduct of a process that serves, first and foremost, the entire population of New Jersey. Ensuring that result is the charge of the Commission and, most assuredly, the 11th member.