

**APPENDIX**

Testimony of  
Patrick Murray  
Monmouth University Polling Institute

New Jersey Senate  
Committee on State Government, Wagering, Tourism & Historic Preservation  
January 7, 2016

Re SCR188 (proposed constitutional changes to legislative apportionment process)

Mr. Chairman, Madame Vice-Chairwoman and members of the committee:

I am Patrick Murray, director of the Monmouth University Polling Institute. Although I have been known, from time to time, to comment on the efficacy and responsiveness of the internal workings of state government in New Jersey, I rarely take a public position on a piece of legislation. When I do it is largely because the process by which the legislation was drawn up does not adhere to principles of good government.

It is for this reason that I appear before you today to express my strong opposition to SCR 188.

This proposed Constitutional amendment will not achieve its stated aim of designing a fair legislative map with at least ten competitive districts.

Furthermore, the wording of the ballot question and interpretive statement seems to be deliberately designed to fool New Jersey voters into supporting a Constitutional change against their own interests.

First, let me say that I endorse the provisions that call for the immediate appointment of the public member or the Apportionment Commission and that codify a public access process while still giving the commission the flexibility for negotiating in private. I also agree with the wisdom of granting legislative leaders the power to appoint commission members in return for barring current legislators from serving on the commission.

However, I must object to the entire amendment because of the language in paragraphs 2.c. and especially 2.d.

Let me start with the "fair representation" provision in paragraph 2.c. According to the Judiciary Committee statement, this provision utilizes the standards established by Dr. Donald Stokes, who served as the commission's public member in both 1981 and 1991.

On close examination, it does not.

Stokes's fairness doctrine states that the number of seats a party holds in the legislature after each election should correlate to its share of the vote in that election. For example, if the statewide vote splits 50-50 split between the Democratic and Republican candidates for office, then the share of legislative seats should be evenly divided. However, according to projections Stokes included in his 1993 monograph, if a party wins 60 percent of the vote, it would be reasonable to see that party take as many as 75 percent of the seats.

Fair enough, but Stokes's fairness test must to be applied to the map as a whole after the fact. You cannot *a priori* set aside 30 evenly-divided safe districts and then work on 10 so-called competitive districts and guarantee that you will come up with a fair correlation of seats to the statewide vote share.

More importantly, though, the crucial metric used by Stokes is whether seats in the legislature correlate to the total vote for *the legislature*. Not how those seats correlate to the vote for a variety of unrelated offices such as President, Governor, or U.S. Senate as set forth in that paragraph.

This linkage is truly bizarre. As we know, voters use a different set of criteria when evaluating who to support in elections for federal offices versus state offices as well as for executive positions versus legislative ones.

If gubernatorial elections told us what type of representation New Jersey voters want in their legislature, I would be directing my remarks today to the Republican Chairman of this committee. By the same token, if presidential elections told us what New Jersey voters want in a legislature, there would be only one Republican sitting on this committee today.

However, even if Stokes's fairness doctrine was applied correctly, it would still be unfair in practice. In determining the legislative vote share of the two parties, Stokes did not employ a straight tally of the statewide vote, but used a district-based vote share average. In other words, instead of using millions of data points – i.e. individual votes – to determine the New Jersey electorate's intent, Stokes used only 40 data points – the two-party percentage margin in each district.

Stokes claimed that, due to widely varying voter registration and turnout rates in each district, this formula would be more representative of the will of all constituents – assuming that non-voters have the same preferences as those who actually showed up to vote.

This may be true in theory, but it is not supported by the data. I examined election results from the past five legislative cycles – which is exactly what Stokes would do. I found 19 instances where one party or the other did not field a full slate of candidates for either the Senate or the Assembly, which represents a not insignificant 6 percent of all races during that period. Moreover, 14 of those 19 cases – or nearly three-quarters of these uncontested races – were instances where the Republican Party did not field a full slate. That means that 14 of the data points used in the Stokes fairness test would produce a result at or near a 100 percent vote share for the Democrats compared to only 5 data points that would produce the same result for Republicans.

This would falsely skew the overall vote share result toward the Democrats, unless you actually believe that there were no minority party voters living in any of those 19 uncontested districts.

On the one hand, using non-legislative elections to determine the legislative maps fairness relies on a false metric. But using the legislative election results as Stokes would have done would produce a skewed metric.

Even if the proposed formula did not face these problems, trying to codify this fairness doctrine in Constitutional language is akin to making the ghost of Donald Stokes the commission's public member in perpetuity. This is simply not something that should be written into the Constitution.

In fact, recent changes to Ohio's legislative redistricting process which were approved by voters there last year, includes a fairness provision that provides sufficient leeway for the members of their commission. It says simply that: "the statewide proportion of districts whose voters, based on [...] election results during the last ten years, favor each political party shall correspond closely to the statewide preferences of the voters."

While, the full provision does use what I believe to be a false metric by including non-legislative elections, the language is broad enough that it allows for each decennial commission to negotiate its meaning while incorporating emerging standards, such as the principle of "communities of interest" which has been largely ignored in New Jersey's process.

More importantly, the Ohio standard also states quite clearly, and I quote, "[n]o general assembly district plan shall be drawn primarily to favor or disfavor a political party."

And it is on this standard that SCR 188 fails miserably.

Because this resolution was introduced less than four weeks ago, I have not had the same opportunity to run vote simulations on potential outcomes, as I am sure its supporters have been doing for the past few years. However, I have been crunching numbers in New Jersey for long enough to know when something smells fishy.

The process in paragraph 2.d. claims to create competitive districts, but actually entrenches a permanent Democratic majority by using a tortured definition of the word "competitive."

In reality, competitive districts drawn using this provision in the 2021 process would almost certainly range from a smaller but definite Democratic advantage to an absolutely solid Democratic advantage.

While this outcome might be in line with the fairness doctrine, it defies any common sense meaning of the word "competitive."

For most voters, the word "competitive" means that either party has a decent shot of winning the seat. It does not mean that one party simply won't lose as badly in a certain district as it will elsewhere in the state.

Over the past two decades, I have had the privilege of hearing the opinions of hundreds of thousands of New Jerseyans. And I can say with certainty that our state's residents want a truly competitive legislative map. Indeed, you need to look no further than election returns which consistently show that competitive elections produce higher turnout.

So I am left to wonder why the drafters of this resolution would use the word "competitive" to describe an outcome that is not competitive according to voters' vernacular?

I am left with only one conclusion. This is a bald-faced attempt to pull the wool over voters' eyes; making them complicit in a process that will only serve to increase their cynicism about politics.

Anyone reading the ballot question and interpretive statement about creating competitive districts would come away with a far different interpretation of what that means than what the proposed Constitutional language will actually produce.

I fully endorse revisiting how our Legislative Redistricting Commission operates. But if a fuller process for public input is a good idea for the commission, then it should also be a good idea for the legislative process by which these constitutional changes are proposed.

Therefore, I urge you to table this resolution.

Thank you.

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January 7, 2016

I am pleased to present comments on SCR188 and ACR4 pertaining to a constitutional amendment to change the administration of the Legislative Apportionment Commission and requirements for the composition legislative districts.

My name is Ingrid W. Reed and until I retired in June 2010 I directed the Rutgers' Eagleton Institute of Politics where I organized a study of New Jersey Redistricting and produced a report authored by Benjamin Brickner now with the Brennan Center at NYU Law School and conducted studies of how legislative districts are covered --- or not covered -- by the media and developed the Voter Info site to provide voters with information about candidates for the legislature.

The first section in the proposed constitutional amendment to change the make up of the commission is a major positive long-overdue step to improve the working of the apportionment commission, a pioneering New Jersey reform effort.

Creating requirements for public involvement and accountability where there was none is an essential improvement -- an effort worthy of bringing to the public for amending the constitutional provision for the composition and tasks of the commission. One recommendation, an easy change, is to include that the 13<sup>th</sup> member serve as chair of the commission.

The second section addresses a serious issue much discussed about the lack competition in the campaigns for election to the Legislature (and to the House of Representatives) as a result of how districts are drawn should be endorsed as a goal with details for implementation by the commission under compliance with federal laws. The related problems of lack competitive districts such as meager media coverage, the awareness and disinterest by voters that the election is a foregone conclusion not requiring their attention and very little of campaign support, mainly by parties, for challengers in races that are unbalanced, all undermine our democracy which is based on the people selecting their representatives.

The apportionment commission should address and promote to competitiveness in their work that is objective using data -- election results, census data, geography -- but it is also subjective, analytical, defining fairness and striking balances. And it is political and partisan by its very nature. If the process

could be done by the numbers or prescription, we would not need a commission. One solution in the constitution, one that has not been openly discussed to create public understanding and where experts differ on how competitiveness could or should be enshrined should add caution about the certainties of how to achieve it.

I would like to point to reports prepared by Dr. Donald Stokes who served as the eleventh member twice, reports that are referred to in the Senate Judiciary Committee Statement to Senate 188. I should note that he used legislative election data rather than statewide general elections data as called for in the proposed amendment. His description of how the commission did its work is compelling in how much thought and weighing of various factors went into different plans and the final plan to achieve what those two commissions determined to be a fair plan to implement in the next decade.

It makes sense to add the goal of competitiveness – even a significant number or range of numbers of competitive districts -- to section 2f which includes “community of interest,” also difficult to define and implement but worthy of debated and delicate crafting – and meet the requirements of important federal laws. The specific numbers in the proposed constitutional amendment are a useful resource not determining number in a process fundamentally about change better left to be a goal or a value. Clearly, there are differences about what percentage signifies “competitive” or what data should be used to determine it, all worthy of debate.

If the first section of the proposed constitutional amendment is adopted requiring public information and engagement as well as public involvement, it will bring out how the commission determined competitiveness, community of interest, compactness and in term public input and understanding. The result should be a commission redistricting plan that every ten years addresses critical issues in resulting how our representatives are chosen.

Thank you.

**Testimony on Redistricting**  
Senate State Government Committee  
Thursday, January 7, 2016  
Committee Room 7

By Maria Teresa Montilla, President  
Latino Leadership Alliance of New Jersey (LLANJ)

Despite their status as the largest minority group in the United States, Latinos are dramatically underrepresented in elected office. Although with a population of approximately 55 million in the United States, making up 17% of the nation's population, there are only 28 Latinos (5%) out of the 535 members of Congress. This pattern of underrepresentation extends to the state level. In New Jersey, Latinos are 18%, but hold only 1.2% and 10% of state offices – 3 out of 40 senators and 8 out of 80 Assembly members are Latino.

This level of representation is, however a high point for Latinos; through most of 1980s Latino representation in Congress lingered in the single digits. The increase in Latino office-holding during the 1990s can be attributed in part to the passage and implementation of the Voting Rights Act (VRA), which facilitated the establishment of numerous majority-minority districts, in which minority voters constitute a majority of the relevant population, be it total population, voting-age population (VAP), or citizen voting-age population (CVAP).<sup>1</sup>

The majority-minority districts remain the primary means through which Latino communities can elect their preferred candidates.

At the center of that court decision was fair representation of all communities, which is by definition the aim of the redistricting process every ten years, when it adjusts to reflect changes in population.<sup>2</sup>

Following the 2010 Census, there was much anticipation surrounding tremendous growth of the Latino population in the nation and changes it would cause to the political map of New Jersey.

The boundaries of the 13 Congressional districts and the 40 state Legislative districts almost certainly would be re-drawn to make them more equal in population. County freeholder districts in three counties and municipal wards in over 60 communities would be re-examined and revised for equal representation. In addition, the distribution of seats on 70 regional boards of education

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<sup>1</sup> Alvaro Bedoya The Unforeseen Effects of Georgia v. Ashcroft on the Latino Community. Yale Law School, J.D. expected 2007; Harvard College, A.B. 2003.

<sup>2</sup> Redistricting is the process of drawing new electoral district boundaries in order to equalize district populations. Since the 1960's – when the US Supreme Court found that decades of maintaining the same districts had led to vast inequalities in district populations (also called mal-apportionment), and thus, to violation of the US Constitution's guarantee to equal protection -, redistricting has been done every ten years soon after the U.S. Census Bureau releases data showing where people reside around the country. The overall purpose of redistricting is to review districts and where necessary, redraw districts in order to address any changes in population concentration. Jurisdictions that use districts for elections must redistrict in order to make the populations in districts equal again and ensure they are complying with "one person, one vote" requirements.

would have to be revised and, ultimately, the local election districts throughout the state would have to be re-drawn to conform to all of the other new boundary lines so that elections could be run efficiently.

This would not be.

There was much hoopla made by the Reapportionment Commission about communities testifying and its commitment to ensuring that the new legislative districts would reflect the changes in population and would conform to the principles of being contiguous, compact and not divide communities of interest; there was much discussion of 'packing' vs. 'cracking'<sup>3</sup>; there were even advocacy organizations like LLANJ and DANR submitting proposed maps and testifying before the commission in justification of such maps. Pretty much the same issues grappled with in 2001, when Democrats took heavily minority districts and distributed their mostly Democratic voters into whiter, more Republican districts, giving the party an electoral advantage. Republicans took Democrats to court, accusing them of diluting minority voters' clout, but Democrats successfully argued that doing so would help elect more minorities to the Legislature.

In the end, instead of redistricting being for the purpose of reflecting changes in population to guarantee compliance with "one person, one vote" requirements; it became a tool for political parties to maintain or obtain jurisdictional control. The parties settled on maps that protected their 'controlled' districts.

Latinos remain grossly under-represented.

Come 2020 Census, we will again be looking at redistricting, but we start 'plotting' to make it work in favor of specific partisan interests, now, four years in advance.

Regarding Constitutional Amendment (ACR-4), Assembly Majority Leader Louis Greenwald said: "New Jersey is a diverse state with continually changing demographics and we want to make sure this uniqueness is respected and represented. Ultimately, these changes will create a more fair and transparent process, one that is truly representative of the people and even more inclusive."

The proposed amendment would increase the membership of the legislative Apportionment Commission and impose certain requirements on the process and composition of the districts established by the commission for the New Jersey Legislature.

This amendment: would increase the number of members of the commission from 10 to 13 members; instead of the chairs of the State Committees of the two major political parties each appointing five members to the commission, they would appoint only two, and the four legislative leaders from both major political parties would each appoint two members; the Chief Justice of the Supreme Court of New Jersey would appoint the 13<sup>th</sup> member; and 25% (10) of districts will be competitive and 75% (30) non-competitive.

In other words, this amendment: would make redistricting occur based on averaged polling data from statewide elections, rather than by population changes recorded during the national

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<sup>3</sup> To 'pack' districts with more Latino voters to increase the chances they'll elect Hispanics to the Legislature, as Republicans proposed, or 'frack' to keep the population spread out and mixed among other ethnic groups, as Democrats preferred.



census; would bring back with force, the politicians that were taken out of the Reapportionment Commission in 1966; would disenfranchise 75% of the voters by a pre-determination of the rule of one or the other party; and would force unaffiliated voters – which are the majority (2.1 million) in New Jersey, to choose a party or remain unrepresented.

Fortunately, the proposed amendment is being introduced at a time when the U.S. Supreme Court is considering a case<sup>4</sup> that well might affect state legislative redistricting with a ruling that could kill the bill in the water.

Chances are the U.S. Supreme Court will continue to apply the total population method articulated in the 14<sup>th</sup> Amendment to state legislative redistricting and reject the Evenwell challenge. We hope.

In any event, redistricting suddenly has occupied center stage, and will be on the voters' minds this year. If the outcome is more competitive legislative elections, and more opportunities for underrepresented communities, it may drive up voter interest and turnout. If it fails to reflect the fastest growing community in the nation, Latinos, with opportunities for fair representation, it will end up in court.

We ask that, in the spirit of reflecting population changes, fair representation, and equal opportunity for all, that the New Jersey Legislature abide by the basic – and honorable – criteria of redistricting:

- Create population equality between districts.
- Avoid splitting municipalities between two legislative districts (unless in cases like Newark and Jersey City that have to straddle two districts due to population size)
- Keep districts contiguous as required by New Jersey Constitution
- Keep districts as compact as possible, which is also a criteria set by the state Constitution.
- Preserve "communities of interest," which is taken to mean everything from regional school districts to regional transportation communities to towns that shop in the same downtown or mall.

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<sup>4</sup> Evenwel v. Abbott is a case that will determine national precedent on redistricting and the question of whether to apportion based on eligible voters or actual voters. That case challenges the way state senate districts were drawn in Texas using 2010 census information. Texas officials followed tradition by relying on total population. But Sue Evenwell and Edwin Pfenninger call this method unfair, stating that redistricting based on total population waters down their vote. They say that redistricting should be based on "vote eligible population" (VEP) rather than on total population. But the likelihood of the high court ruling in Evenwell's favor seems low given wording of the 14<sup>th</sup> Amendment to the U.S. Constitution. Section II states that "Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed."

- Stay away from the priority of continuity of representation, which means doing what's necessary to protect incumbent legislators.
- Increase as much as possible the number of competitive districts where both parties have a reasonable ability to win seats.
- Provide opportunities for minority representation, not breaking up any majority-minority districts now in existence.

And, as Monmouth University political scientist and pollster Patrick Murray put it in his testimony before the New Jersey Reapportionment Commission in 2011 "I speak to you as an independent voter, in competitive districts, we would make the difference. Your absolute rule is not to diminish the standard of competitiveness. A competitive map is a fairer map in every sense of the word."

I urge you to consider a more proactive definition of competitiveness -- one that creates the highest possible number of competitive legislative districts with just representation of New Jersey's population.

Thank you

Testimony of  
Cathy Fulton, Jackson, NJ

January 7, 2016

I am here this morning as a citizen of New Jersey to publically state my awareness of the egregious conduct and actions the legislature is pursuing in order to pass four NJ state constitution amendments.





These four amendments are being craftily rushed through the last days of the session in order to benefit personal, political and financial gains.

This is a blatant disrespect to NJ citizens in cramming these public hearings on a single work day right after the holidays where it is difficult for many people to take off work in order to be here.

The four issues have no place to be even proposed as amendments. Budget policy decisions need to be conducted in the legislature. These amendments are stripping away the rights of the people of New Jersey.

Words matter. The explanatory statements for these amendments are very misleading and unclear and in no way express the broad consequences of these amendments.

The actions being taken here are a mirror image of the dysfunction that is going on at the federal level in Washington, D.C. Americans are tired, frustrated and angry at the total disregard of the will of the people.

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From: jeanpublic1@yahoo.com [jeanpublic1@yahoo.com]

Sent: Wed 1/6/2016 9:14 AM

To: OLSaideSSG

Cc:

Subject: scr188 vote no

Attachments:

[View As Web Page](#)

the corruption going on with reference to districts for voting is corrupt to the max. we need to restore districts to county lines. if you are in a county, that should be your voting district. the strang elines we have to use today has no relation to anything at all except to keep parties in power. I do not think scr188 brings any more relevance to having each vote count. we need a better system and scr 188 is not it. its just more corruption for the partys benefit for incumtents.

11x