

October 8, 2021

Via Electronic Mail (danisewilson716@gmail.com)

Danise C. Wilson, MPH
Chairwoman
Erie County Advisory Committee on Reapportionment
77 Goodell Street
Buffalo, New York 14203

Re: *Erie County Advisory Committee on Reapportionment Scheduling & Deadlines*

Dear Madam Chair:

As you are aware, you requested that both the majority and minority members of the Erie County Advisory Committee on Reapportionment ("Committee") submit their respective reapportionment maps by October 15, 2021. In consideration of the recent release of updated and more accurate Census data - namely, the Erie County New York Adjusted Final Redistricting Data received October 4, 2021 - the minority members of the Committee respectfully request a scheduling modification.

As you are no doubt aware, the United States Census Bureau ("USCB") counts prisoners as residents of the census block where a correctional facility is located.¹ Accordingly, while collecting data for the 2020 U.S. Census, the USCB counted prisoners incarcerated at the Wende Correctional Facility as residents of Alden, New York, and prisoners incarcerated at the Collins Correctional Facility as resident of Collins, New York. Since its formation on September 17, 2021, the Committee has been analyzing Census data released on or about August 12, 2021, which counts prisoners as residents of Alden and Collins.

However, N.Y. Mun. Home Rule Law 10² explicitly prohibits the counting of prisoners as residents for purposes of reapportionment. More specifically, N.Y. Mun. Home Rule Law 10 provides:

[N]o person shall be deemed to have gained or lost a residence, or to have become a resident of a local government ... by reason of being subject to the jurisdiction of the department of corrections and community supervision and present in a state correctional facility pursuant to such jurisdiction. *A population base for such a plan of apportionment shall utilize the latest statistical information obtainable from an official enumeration done at the same time for all the residents, citizens, or registered voters of the local government ... (emphasis added).*

¹ https://www2.census.gov/programs-surveys/decennial/2020/program-management/memo-series/2020-memo-2018_04-appendix.pdf

² Both the New York State Senate and Assembly have passed Senate Bill 5160-B, which if signed by the Governor, will amend N.Y. Mun. Home Rule Law 10. Notably, among other provisions, Senate Bill 5160-B mandates that "the difference in population between the most and least populous district shall not exceed four percent of the mean population," prohibits Districts "drawn with the intent or result of denying or abridging the equal opportunity of racial or language minority groups to participate in the political process ..." and requires that "a district shall unite communities defined by actual shared interests ..."

Critically, the latest statistical information obtainable is the Erie County New York Adjusted Final Redistricting Data received by the Erie County Board of Elections on October 4, 2021 ("Adjusted Data"), not the Census data of August 12, 2021, which the Committee has utilized to date.

Indeed, pursuant to N.Y. Legis. Law § 83-m, the New York State Legislative Task Force on Demographic Research and Reapportionment recalculated the Census numbers,³ specifically for redistricting purposes, "such that each geographic unit reflects incarcerated populations at their respective residential addresses prior to incarceration rather than at the addresses of such correctional facilities." As First Assistant County Attorney Jeremy Toth concluded in an email to both Committee Commissioners dated October 7, 2021, the Committee *must* analyze and incorporate the Adjusted Data, not the outdated Census data previously distributed to the Committee. If the Committee fails to do so, the population of Alden will be erroneously inflated by more than 600 residents and the population of Collins by more than 2,000 residents.

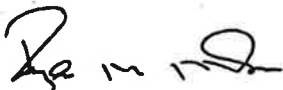
Stated plainly, the Census data that the Committee has been analyzing to date is outdated and, for purposes of reapportionment, unlawfully counts prisoners as residents of Alden and Collins.

As you are aware, the Committee has been charged with making thorough and thoughtful "recommendations to the County Legislature on whether and how the County Legislature should be reapportioned consistent with federal and state law." Erie County Charter, Section 210.⁴ By analyzing Census data from August 2021 that includes prisoners as residents of Alden and Collins, the Committee cannot effectively make recommendations in compliance with N.Y. Mun. Home Rule Law 10. More fundamentally, the Committee cannot provide thorough and thoughtful recommendations in the form of reapportionment maps to the County Legislature by October 15, 2021 using data just received on October 4, 2021, just eleven days prior.

The Committee need not submit its report to the Legislature until sixty days after September 17, 2021, the date of its appointment, so the minority members respectfully submit that October 15, 2021 is an arbitrary and unnecessary deadline that should not be enforced in light of the recent release of the Adjusted Data. Consequently, the Committee minority members respectfully request a scheduling modification to be determined by the entire Committee during our scheduled meeting of October 15, 2021.

Thank you for your consideration.

Respectfully,



Ralph M Mohr

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Ralph Mohr
Commissioner, Erie County Board of Elections
Member, Erie County Advisory Committee on Reapportionment

³ <https://latfor.state.ny.us/data/?sec=2020amendpop>

⁴ <https://www3.erie.gov/law/charter/article-2-legislative-branch-charter>