

COMMONWEALTH OF PENNSYLVANIA
LEGISLATIVE REAPPORTIONMENT COMMISSION

In re: Public Meeting of the Legislative
Reapportionment Commission

VOLUME X - Pages 575-656

Stenographic report of hearing held
in Room 8E-B, Capitol East Wing,
Harrisburg, Pennsylvania

Tuesday
August 24, 2021
10:30 a.m.

MARK A. NORDENBERG, CHAIRMAN

MEMBERS OF LEGISLATIVE REAPPORTIONMENT COMMISSION

Sen. Kim Ward	Rep. Kerry Benninghoff
Sen. Jay Costa	Rep. Joanna McClinton

Also Present:

Robert L. Byer, Esq., Chief Counsel
G. Reynolds Clark, Executive Director
G. Carlton Logue, Esq. Deputy Counsel, Senate Majority Leader
Chad Davis, Research Analyst, Senate Republican Policy Office
C.J. Hafner, Esq., Chief Counsel, Senate Democratic Leader
Ronald N. Jumper, Esq. Deputy Chief Counsel, Senate Democratic
Leader
Lora S. Schoenberg, Director, Senate Democratic Legislative
Services
Rod Corey, Esq., Chief Counsel, House Republican Caucus
James Mann, Esq., Senior Deputy Chief Counsel, House
Republican Caucus
Katherine Testa, Esq., Senior Legal Counsel, House
Republican Caucus
William R. Schaller, Director, House Republican District
Operations
Michael Schwoyer, Esq., Special Counsel, Deputy Chief of
Staff for Legislation and Policy, House Democratic Caucus

Reported by:
Ann-Marie P. Sweeney
Official Reporter

Also Present:

Justin Klos, Director, House Democratic Office of
Demographic Analysis

David Brogan, Esq., Director, House Democratic Legislation
and Policy

Andrew McGinley, Esq., General Counsel, House Democratic
Government Oversight Committee

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Brent McClintock, Director, Legislative Data Processing Center 653

1 CHAIR NORDENBERG: Good morning, everyone. My
2 name is Mark Nordenberg. As Chair of the Legislative
3 Reapportionment Commission, it is my privilege to call this
4 meeting to order. I also want to extend greetings to all of
5 the citizens of Pennsylvania who have joined us either in the
6 Capitol today or through the livestream of this program. I
7 extend those greetings not only for myself but on behalf of
8 the four other Commissioners, the Caucus Leaders of the
9 legislature of Pennsylvania. To my right is Senator Kim Ward,
10 who is the Majority Leader in the Senate. Down from me to my
11 left two seats is Senator Jay Costa, the Democratic Leader of
12 the Senate. Next to him is Kerry Benninghoff, the Majority
13 Leader of the House of Representatives. And a little bit
14 further down to my right is Representative Joanna McClinton,
15 who is the Democratic Leader of the House of Representatives.

16 The hearings and meetings of the Legislative
17 Reapportionment Commission all have been livestreamed and then
18 posted on the Commission's website so that they are available
19 to the public. In addition, the website has a portal that
20 continues to accept comments from citizens with respect to the
21 reapportionment process. As of this morning, there were more
22 than 100 comments from members of the public posted on the
23 website. So I remind all of you that that option is
24 available.

25 It is not unusual, as I prepared to Chair yet

1 another meeting of this group, that process issues come up.
2 When I arrived last night, I was asked whether or not all
3 resolutions were going to go through the LRB. Though I spent
4 my life, or part of it, teaching legal process, I feel like a
5 stranger in a strange land here in the legislature. I don't
6 know what the LRB is or what it does. I would say that all of
7 the resolutions, up to this meeting, have been short, sweet,
8 and drafted by me. But if there is a better process to do
9 that, I'd just be glad to know about it so that we can
10 regularize our manner of proceeding in the weeks ahead.

11 I also was asked last evening whether we needed a
12 parliamentarian. I thought, perhaps optimistically, that in a
13 group of five, that shouldn't be necessary. Senator Ward had
14 congratulated me after our last hearing for the way in which I
15 was able to keep things moving, so I decided that I would
16 bring my own parliamentarian today, which is an over-sized
17 gavel commemorating the installation of Sam Smith as the
18 Speaker of the House. Hopefully, I won't need it, and
19 hopefully I won't need anything more than that.

20 SENATOR K. WARD: What would that be? I'm just
21 curious.

22 (Laughter.)

23 CHAIR NORDENBERG: Well, you notice I have my
24 lawyer by my side today.

25 Well, let me ask first whether there are any

1 opening or welcoming remarks that other Members of the
2 Commission would like to offer at this point.

3 (There was no response.)

4 CHAIR NORDENBERG: Okay. The first item of
5 business on the agenda then is the approval of three sets of
6 minutes. They are for the meeting of May 26, 2021, which was
7 our organizational meeting; the meeting of June 25, 2021.
8 That set of minutes is accompanied by an errata sheet that has
9 been distributed to you. The only reason for that errata
10 sheet, I should confess, is that I made a mistake reading a
11 number \$6,475, which should have been \$6,615. That is the
12 number that is in the resolution passed by the Commission.
13 And then there are the minutes also of the meeting of July
14 13th.

15 Are there any additions or corrections to those
16 minutes?

17 (There was no response.)

18 CHAIR NORDENBERG: If not, could I have a motion
19 for their approval?

20 SENATOR K. WARD: So moved.

21 CHAIR NORDENBERG: Second?

22 SENATOR COSTA: Second.

23 CHAIR NORDENBERG: All in favor, please say "aye."

24 SENATOR K. WARD: Aye.

25 SENATOR COSTA: Aye.

1 REPRESENTATIVE BENNINGHOFF: Aye.

2 REPRESENTATIVE McCLINTON: Aye.

3 CHAIR NORDENBERG: Aye.

4 Any opposed?

5 (There was no response.)

6 CHAIR NORDENBERG: Thank you very much.

7 In my memorandum to Members of the Commission on
8 August 19th, I spelled out what I thought would be a sensible
9 order for dealing with the principle item of business that is
10 on the agenda today, that is the consideration of a proposed
11 resolution regarding prisoner data reallocation, which will be
12 introduced by Leader McClinton. And I had proposed that
13 Leader McClinton introduce a resolution so that we have it on
14 the table, that Senator Costa, as I expect, will second it,
15 and then we will move through a series of presentations before
16 actually getting to the discussion of the resolution.

17 So let me call on you, Leader McClinton.

18 REPRESENTATIVE McCLINTON: Thank you, Mr.

19 Chairman.

20 Mr. Chairman, I move that we take up Resolution
21 4A.

22 CHAIR NORDENBERG: Thank you very much.

23 And is there a second?

24 SENATOR COSTA: Yes, Mr. Chairman. I second the
25 recommendation that we take up this resolution made by my

1 colleague, Leader McClinton.

2 CHAIR NORDENBERG: Thank you very much.

3 When Chief Counsel for the Commission and I walked
4 into this room last night, it suddenly became a trip down
5 memory lane, because it was 21 years ago in this room that he
6 had his confirmation hearing as a young judge of the
7 Commonwealth Court. We're very pleased to be able to share
8 that bit of history with you today, Mr. Byer. And as Chief
9 Counsel for the Commission, I have asked Mr. Byer if he would
10 provide an overview of the legal issues that will undergird
11 the discussion today. And so the floor is yours, sir.

12 MR. BYER: Thank you, Mr. Chairman. I hate to
13 disagree with you, but it was actually 31 years ago in this
14 room. I was an even younger judge at the time, so.

15 I want to first thank all the lawyers for all four
16 Caucuses for their professional and helpful presentations on
17 both sides of the important issue that we are going to deal
18 with. As some of you may be aware, we had briefs submitted on
19 the legal questions, and the Chairman and I have spent a great
20 deal of time studying these, and in addition, I have done a
21 fair amount of independent legal research.

22 For each of the briefs that we received from the
23 four Caucuses, there are aspects of the analysis with which I
24 agree, and there are aspects of the analysis with which I
25 differ. My conclusions differ in some respects from the

1 arguments by all of the Caucuses. So, I will try to explain
2 my reasoning, but before I do, what I want to do is just
3 briefly go over what my conclusions are, and then I will tell
4 you, just for the benefit of my advice to the Commission, how
5 I reached those conclusions.

6 My conclusions are as follows: First, neither the
7 United States Constitution nor the Pennsylvania Constitution
8 would be violated either by maintaining the current practice
9 or by changing the current practice, as proposed in the
10 resolution. Second, the provisions of the Election Code and
11 Voter Registration Act concerning residents and prisoners for
12 purposes of registration and voting do not control where
13 prisoners are counted for purposes of redistricting, but those
14 statutes do express a public policy that the Commission may
15 consider. Third, because the 1968 amendments to the
16 Pennsylvania Constitution adopting Article II, Section 17, in
17 its current form, and rescinding former Article II, Section
18 18, were intended to remove the General Assembly from any role
19 with respect to legislative redistricting and instead place
20 that role in this independent Commission, legislation is not
21 required in order for this Commission to make the changes
22 proposed in the resolution, and, therefore, this Commission
23 has the authority to adopt the proposed resolution if the
24 Commission concludes that the proposed change is required in
25 the exercise of its judgment based upon considerations of

1 fairness and public policy.

2 Let me explain how I got to these conclusions.

3 First, we're dealing with a practice by the Census Bureau of
4 counting prisoners, as well as other residents of what the
5 Census Bureau terms group quarters, in their usual residence,
6 which the Census Bureau defines as the place where a person
7 lives and sleeps most of the time. The Census Bureau has
8 taken pains to note that this practice does not equate to a
9 determination of the legal residence of any person, but merely
10 is a practice that the Census Bureau developed in accordance
11 with the first Census Act in 1790, which referred to an
12 enumeration of persons at their usual place of abode. So,
13 what we're dealing with is a practice that was not imposed by
14 any political party. It was not a practice imposed by the
15 General Assembly or by any official in the Commonwealth of
16 Pennsylvania. This is the Census Bureau, and all of the
17 redistrictings to date of the Pennsylvania General Assembly by
18 this Commission have followed that practice. The Census
19 Bureau was requested in 2018 to change that practice with
20 respect to prisoners and other group quarter situations, but
21 the Census Bureau declined to do so, sticking to its
22 traditional method of determining usual residence for Census
23 purposes.

24 The Pennsylvania General Assembly has, on
25 occasion, been requested to change this practice with respect

1 to congressional, legislative, and local redistricting. But
2 the Pennsylvania General Assembly has not, thus far, acted on
3 any of the proposed bills that have come before it. And, as
4 noted, the Commission has traditionally followed the Census
5 Bureau in determining where to count prisoners and other group
6 quarter residents. Other jurisdictions have dealt with this
7 issue, and there are 11 States, as has come out in the
8 evidence and the testimony that we've developed at the
9 hearings that have preceded this one, there are 11 States that
10 have made this change. All 11 of these States have done so by
11 legislation. But in nine of those States, I believe, the
12 legislature of that State retains control of legislative
13 redistricting. Two of those States, California and Colorado,
14 involve independent citizens' commissions, and in those
15 States, what the legislature did was actually make a request
16 of the commission to change its practice, but the legislature
17 did not itself affect that change. I could take you through
18 the various States, but I will save that, in case anybody has
19 any questions, but let's move right to the constitutional
20 questions.

21 There is clear precedent that neither the United
22 States Constitution nor the Pennsylvania Constitution are
23 violated by counting prisoners and other residents of group
24 quarters where they are imprisoned or housed rather than in
25 the places where they previously resided. In Borough of

1 Bethel Park v. Stans, the United States Court of Appeals for
2 the Third Circuit in 1971 dealt with this question and
3 rejected a challenge to the Census Bureau's method of
4 determining the place of counting college students, members of
5 the Armed Services, and inmates as residing where they are
6 housed rather than in their former residences. The Court of
7 Appeals found no violation of the U.S. Constitution in
8 determining an apportionment base that is based upon treating
9 residents of these group quarters where the quarters are
10 located.

11 This issue came before the Pennsylvania Supreme
12 Court in 2002 in Albert v. 2001 Legislative Reapportionment
13 Commission. In that case, which grew out of the 2001
14 legislative redistricting in Pennsylvania, one of the
15 challenges was a claim that the Commission acted arbitrarily
16 by using total population criteria when drawing district
17 lines, and specifically the challenge was made to the way in
18 which the 123rd House District was drawn because there were
19 three prisons in that district, and the total population
20 therefore was argued to be artificially inflated as a result.
21 The Pennsylvania Supreme Court rejected that challenge and
22 held that there was not a malapportionment or violation of the
23 Constitution based upon that Census Bureau practice being
24 followed in Pennsylvania. This position of Albert is still
25 the law in Pennsylvania. It was not affected by either of the

1 two Holt decisions or the more recent Supreme Court decision
2 in League of Women Voters, at least with respect to the
3 question of prisoner reallocation.

4 And there are other Federal cases that also
5 support the conclusion that reallocating prisoners is not
6 required by the Federal Constitution. And, again, I could
7 answer questions on those, but the current state of the law is
8 that there is no constitutional violation, and that's true in
9 the Federal Courts, and at least while Albert remains the law
10 in Pennsylvania, it is also true here. Although the argument
11 has been made that the Pennsylvania Supreme Court's decision
12 in League of Women Voters renders the current system
13 unconstitutional under the free and fair elections clause of
14 the State Constitution, I don't think that the issue here was
15 squarely before the Supreme Court in that case. There's
16 language in that opinion that could indicate that the Supreme
17 Court might take that direction, but thus far it hasn't, and
18 as I said, the court did not overturn its precedent in Albert.

19 That takes us to the argument based on the
20 Election Code. And again, Section 703 of the Election Code,
21 and then a similar section of the Voter Registration Act that
22 deals with the residence of prisoners for purposes of
23 registration and voting, are limited to questions of
24 registration and voting. They do not answer, specifically,
25 the question that is before this Commission. And indeed, the

1 prefatory language that limits the consideration of those
2 statutes to registration and voting, I think there would be
3 some profound effects if, for example, the language about
4 residence were taken out of context, how would that apply to
5 questions of residence for purposes of venue or personal
6 jurisdiction in civil cases? So I don't think those statutes
7 answer the question. Importantly also, Section 703 of the
8 Election Code was on the books already when the Supreme Court
9 decided the Albert case. So again, I think the Supreme Court
10 knew about that statute but nevertheless held that there was
11 no problem in the current practice of counting prisoners in
12 the place of imprisonment.

13 But even though neither the Federal nor
14 Pennsylvania Constitutions would require a change in the
15 method in which Pennsylvania treats prisoners and others for
16 purposes of redistricting, I find that there is nothing that
17 would prohibit this Commission from making such a change. The
18 Supreme Court's decision a couple of years ago in the Evenwel
19 case recognizes that a State has discretion to depart from a
20 strict Census count so long as there is no invidious
21 discrimination or violation of the one-person-one-vote
22 principle. And that's consistent with law that the Supreme
23 Court laid down 55 years ago in Burns v. Richardson. There
24 are, again, other Federal cases that speak to that question.
25 There is an argument that was made that Article II, Section

1 17, by referring to Census data, would require this Commission
2 to follow Census data, but I don't think that those provisions
3 can be read fairly to so require it. Census data is assumed
4 to be a basis for what this Commission does, because timing of
5 our plans are based upon that data. But again, I don't find
6 the limitation in those provisions that has been argued.

7 So the question then becomes whether this
8 Commission, on its own, may change the manner in which
9 prisoners are treated for purposes of redistricting or whether
10 that requires legislative action by the General Assembly.
11 Ordinarily, issues of public policy are determined by the
12 General Assembly, but I have spent a lot of time going through
13 the history of the 1967-1968 Pennsylvania Constitutional
14 Convention. And in ratifying Article II, Sections 16 and 17,
15 of the Pennsylvania Constitution in 1968, in the context of
16 what transpired at the convention that proposed these
17 amendments, it is clear to me that the voters removed the
18 power of the General Assembly over legislative redistricting
19 and placed that power exclusively in this independent
20 Commission.

21 Before the 1968 amendments were ratified, Article
22 II, Section 18, of the Constitution gave the General Assembly
23 the power to reapportionment or redistrict itself. The
24 records of the 1967 and 1968 convention show that this issue
25 was hotly contested and the subject of vigorous debate. The

1 committee for the convention that made the proposal for what
2 now is Article II, Section 17, made a purposeful decision to
3 take this power outside the purview of the General Assembly.
4 There were several efforts on the floor of the Convention to
5 amend that provision and to again reinstate the General
6 Assembly's role in doing the legislative redistricting, as had
7 been the case before 1968, and those efforts were all rejected
8 with vigorous floor debate.

9 During the second effort to adopt such an
10 amendment to this proposal, which was Proposal No. 2 at the
11 convention, during the debate on the so-called Shoemaker
12 amendment, Delegate Baldridge, who was a member of the
13 Subcommittee on the Method of Apportionment that drafted the
14 proposal to create this Commission, stated very directly that
15 the idea was to take it away from the General Assembly. That
16 being the case, my advice to this Commission is that it has
17 the power to make this proposed change, and that the action by
18 the General Assembly is not required. Indeed, the General
19 Assembly itself might lack the power to do anything except to
20 request action by the Commission or propose a constitutional
21 amendment. Although the Commission has plenary authority over
22 legislative redistricting though, it may certainly consider
23 any policy determinations made by the General Assembly in the
24 forms of other legislation. And this is where I think the
25 Commission could take some relevance from the provisions of

1 the Election Code and Voter Registration Act.

2 As I previously noted, the Supreme Court's
3 decision in the 2018 League of Women Voters case might
4 indicate the Supreme Court of Pennsylvania taking a direction
5 that might depart from its analysis of the constitutional
6 question in Albert. This is of some concern because, of
7 course, this Commission wants to adopt a plan that will
8 withstand judicial review. As everybody knows, 10 years ago
9 the Commission had to do the plan over again when the Supreme
10 Court of Pennsylvania reversed.

11 So in order to consider whether there was any
12 prospect of this, I requested our consultant, Dr. Cervas, to
13 assist me in my role as Counsel to this Commission and in
14 preparing for any potential litigation on this question, with
15 an analysis of whether the current practice of treating
16 prisoners as residents of the place where the correctional
17 institution is located results in any vote dilution. And
18 while this is still a work in progress, I can report that Dr.
19 Cervas, using data supplied by the Redistricting Director for
20 the House Republican Caucus in July of this year, confirmed
21 the conclusion of Professors Remster and Kramer, although
22 using different statistical methodology, Professors Remster
23 and Kramer were the two Villanova professors who testified
24 earlier before the Commission, that there is a statistically
25 significant effect showing a difference in districts where

1 there is a State correctional institution and in counties or
2 districts where such an institution is not located in terms of
3 the number of votes required to elect a representative.

4 I believe the Commission should take this into
5 consideration in determining whether to make a change because
6 of the possibility that the Supreme Court could, the next time
7 around, depart from its analysis in the Albert case, given
8 some of the dicta that appears in the League of Women Voters
9 case. At a minimum, certainly a case has been made that the
10 current practice does result in unfairness both to prisoners
11 and residents of districts without State correctional
12 institutions, and that unfairness would justify action by this
13 Commission if it chooses to take it, even without finding a
14 constitutional violation.

15 So for all these reasons, my advice to the
16 Commission is that the current state of the law does not
17 prohibit the current practice of counting prisoners as
18 residents of their places of imprisonment based upon the
19 Federal Census, but the law also does not prohibit this
20 Commission from changing that practice if the Commission, in
21 exercising its exclusive and plenary authority over legislative
22 redistricting, determines that such a change is required in
23 the interest of fairness and sound public policy. I express
24 no opinion on what the Commission ultimately should decide,
25 but I am happy to answer any questions.

1 Thank you.

2 CHAIR NORDENBERG: And without opening the floor
3 for rebuttal, because each Commissioner will have the chance
4 to speak, I do think this would be a good time for questions
5 to our Counsel.

6 Senator Ward.

7 SENATOR K. WARD: Thank you for that in-depth
8 analysis. And I'm proud of myself, because I actually, you
9 were so interesting, I was able to focus that whole time. So,
10 and that's really something.

11 So anyway, my question is, so we have the power
12 here to do that, but what happens when we create discrepancies
13 and nonuniformity by only affecting State prisons, not
14 Federal, so congressional districts would be different than
15 State House? We'd have different numbers in these areas for
16 State House and State Senate and Congress and municipal. How
17 does this do that, because this resolution, as Representative
18 McClinton had before in her legislation, she had Federal,
19 State, and municipal maps. But this is just State, so we will
20 be different than Congress. And how and what body is able to
21 address that issue, if this moves forward? I think that has
22 to be the legislature, correct?

23 MR. BYER: That is correct. It would be the
24 legislature that would have to adopt such a change with
25 respect to congressional districts in Pennsylvania. The

1 legislature would also have to adopt such a change with
2 respect to municipal redistricting in areas that are covered
3 by the current Municipal Reapportionment Act. Consistency is
4 desirable, but it is not required. And there are States that
5 have made these changes with respect to legislative districts
6 that have not done so with respect to congressional districts.
7 There's one State that has made this change with respect to
8 local redistricting but not State or Federal redistricting.
9 So there are a number of options available. This Commission
10 could only affect legislative, and this becomes an issue of --
11 there are inconsistencies that could develop, but those are
12 inconsistencies that are lawful, that would not render a plan
13 unlawful for that reason alone.

14 SENATOR K. WARD: Okay. The thing I kept saying
15 in these other meetings, and I don't know if it's actually
16 true, do they count college students where they are residing
17 when they are doing the Census?

18 MR. BYER: Yes. College students are counted in
19 their place of usual residence, which would be on campus for
20 students who live on-campus, or in off-campus housing, rather
21 than in what they would perhaps be legally domiciled with
22 their parents or original residence.

23 SENATOR K. WARD: So I can't understand the
24 difference between that and someone who is incarcerated.
25 Those students are there for a very short time. Many of these

1 folks are there for a long time. So what would be the
2 difference? I mean, if we would do this, could we not then
3 say we're going to change it, so if you're a college student,
4 you're not going to count in the Census any longer in the
5 place where you are going to college?

6 MR. BYER: I can only answer that question with
7 respect to what's going on legally. There are policy
8 considerations that would come into play too. Legally, there
9 are some States that have done this only for prisoners and not
10 with respect to other group quarters. There's nothing that
11 would say that you have to do this for all or none or only
12 some. The choice is up to the Commission. Legally, they
13 would be the same. The one distinction that I've seen argued
14 is that college students are in their locations by choice and
15 prisoners have no choice as to where they are located. But as
16 I say, that's an argument that has been raised for why the
17 prisoner situation might be different. But again, this
18 Commission retains the authority to deal with these
19 situations.

20 SENATOR K. WARD: I would argue that point. I
21 think prisoners broke the law, and when you break the law, you
22 lose some of your rights, and that may include where you're
23 going to be living. So.

24 CHAIR NORDENBERG: Any other questions for Chief
25 Counsel Byer?

1 Oh, Leader McClinton.

2 REPRESENTATIVE McCLINTON: Thank you, Mr.

3 Chairman.

4 Chief Counsel, can you further explain Dr. Cervas'
5 findings?

6 MR. BYER: Dr. Cervas did a statistical analysis,
7 and again, he is still in the process of doing this, but
8 essentially based on this analysis, he determined that there
9 was a statistically significant evidence that there would be
10 fewer votes required to elect a representative in a district
11 where a State correctional institution was located as compared
12 with a district that did not have a correctional institution.
13 I don't purport to understand all of the statistics for the
14 motive analysis there, and again, he's still on it, but his
15 conclusions in that respect are similar to the conclusions
16 that were in the paper presented by the two Villanova
17 professors, but he used, as I understand it, a different
18 statistical methodology.

19 CHAIR NORDENBERG: Leader Benninghoff.

20 REPRESENTATIVE BENNINGHOFF: Thank you.

21 Thank you, Counsel, for that in-depth review of
22 your opinion on some of this.

23 You used the word "fair" several times, multiple
24 times, and I think Leader McClinton raises some good points
25 there as far as other quartered populations. And while we

1 want to feel as though we're being fair to one but yet other
2 ones are not, I'm curious how you can balance that out when
3 the proposal that we're being asked to vote on today is not
4 even the same as has been introduced in the committee at this
5 point. It's been revised multiple times, and this is a pretty
6 major policy change. I'm just curious of how that is going to
7 be perceived to be fair to the general public who does not
8 have all the background knowledge that you have been reading
9 through and studying.

10 MR. BYER: Well, the question of fairness is a
11 determination that this Commission would make. I don't have
12 any advice for this Commission on what is fair. Only to, I
13 think the Commission needs to make that determination, and my
14 advice is that you can act on the basis of what you consider
15 to be required in the interest of fairness. That always
16 underlies the policy choices that are made in redistricting
17 and reapportionment.

18 So in answer directly to your question, I don't
19 have an opinion on how to balance that. That's not really a
20 legal question but a policy question, in my view, for this
21 Commission to make.

22 REPRESENTATIVE BENNINGHOFF: Mr. Chair, if I could
23 have a quick follow-up?

24 CHAIR NORDENBERG: I'm sorry, I didn't hear you.

25 REPRESENTATIVE BENNINGHOFF: If I may have a quick

1 follow-up, sir?

2 CHAIR NORDENBERG: Yes.

3 REPRESENTATIVE BENNINGHOFF: Thank you for your
4 response. With that in mind, I'm thinking about some of the
5 inmate population that may be sentenced for a long duration of
6 time, and may be sentenced currently, or I should say acutely,
7 and then have a sentence of more than 10 years, would that
8 then not be their residence for this next term of the
9 reapportionment process? And, therefore, it seems
10 counterintuitive to say that students in other quartered
11 populations, whether it's those with -- I mean, there's a
12 multitude of different populations that are put in centers,
13 whether it's intellectual disability centers, college choices,
14 and even senior living. There are some that go to senior
15 facilities for many months at a time for rehabilitation
16 purposes that may not return or may be there when the Census
17 counts. It just seems as though, if we are truly focused on
18 fairness and transparency, there seems to be inconsistency in
19 how we're applying that, especially, as I said, for some who
20 may be incarcerated for a much longer term.

21 MR. BYER: And I think, again, Leader Benninghoff,
22 what you're discussing is something that would definitely be
23 open for consideration by the Commission and is a valid
24 consideration. There are distinctions that perhaps can be
25 made, but I think those are distinctions that the law does not

1 dictate, but rather policy choices to be made by the
2 Commission.

3 CHAIR NORDENBERG: Thank you, again.

4 Any other questions?

5 (There was no response.)

6 CHAIR NORDENBERG: If not, we intend to proceed
7 through remarks by each Member of the Commission, beginning
8 with Leader McClinton, who is the principle sponsor of the
9 resolution.

10 REPRESENTATIVE McCLINTON: Thank you, Mr.
11 Chairman.

12 Good morning, Chairman Nordenberg, Leaders
13 Benninghoff, Ward, and Costa, and to the members of the public
14 who are present and many watching virtually today. Chairman
15 Nordenberg, thank you for giving this very important issue
16 consideration commensurate with its gravity. You invited full
17 participation by experts, stakeholders, and as a result, there
18 is now a complete and compelling record before this Commission
19 that supports reallocation of incarcerated persons to their
20 home communities for purposes of reapportionment. I urge the
21 Commission to end the unjust practice of treating incarcerated
22 individuals as residents of places where they are incarcerated
23 as opposed to counting them to where they live prior to
24 incarceration and where they are likely to return after
25 incarceration.

1 The problem of mass incarceration has grown
2 increasingly worse over the past three decades in this entire
3 country. The prison population in the Commonwealth of
4 Pennsylvania has increased nearly 300 percent since the early
5 1980s. As of March 30, 2020, there were more than 45,000
6 people in State prisons. It makes no sense that we ignore the
7 societal shift and continue to treat incarcerated persons as
8 residents of places where they're incarcerated, where they
9 have no daily or long-term relationships in the community and
10 they have no plans to remain there. Prisoners look to
11 representatives of their home districts for vital constituent
12 services. My fellow Caucus Members and their district
13 offices, they deal with this reality each and every day. The
14 briefs that were submitted, they detail the legal arguments in
15 favor of reallocation, and the expert testimony and materials
16 presented to this Commission, they demonstrate why
17 reallocation is appropriate.

18 I'll use my time today to emphasize six brief
19 points that underscore why Resolution 4A should be adopted.
20 First, the Pennsylvania Constitution leaves no doubt that this
21 Commission has the authority to reallocate incarcerated
22 individuals to their home communities. The Commission was
23 created by the people of Pennsylvania through that 1968 State
24 Constitution, which is the supreme law of this Commonwealth.
25 Article II, Section 17, of the Constitution tasks this

1 Commission with the authority to reapportion the Commonwealth.
2 The only limitations on the power appear in another section of
3 the Constitution, Article II, Section 16, which directs that
4 there are 50 Senatorial seats and 203 Representative
5 districts, and that they must be compact and contiguous, as
6 nearly equal in population as possible, and not divide
7 municipalities unless absolutely necessary. Under the long-
8 settled law in Pennsylvania, the Commission has inherent
9 authority to accomplish its mission, and this necessarily
10 includes the authority to decide where persons with multiple
11 addresses are, in fact, counted.

12 My colleagues have argued that the Commission is
13 required to use the United States Census data without any
14 adjustment, but this argument fails for many reasons. Most
15 importantly, there is no such requirement in our Constitution.
16 Article II, Section 17, references the Census three times, but
17 only in relation to timing. Reapportionment is to occur
18 following or after the Census. There is no requirement that
19 unadjusted Census data must be used. No court has ever held
20 as such. Even the cases that my colleague cited recognize
21 that adjustments to Census data are permissible. In fact,
22 courts have acknowledged that blind appropriation of Census
23 data without any adjustment can lead to population disparities
24 that render an entire plan unconstitutional. In addition to
25 being authorized by the Constitution, there is a history of

1 adjusting Census data when drawing legislative districts here
2 in Pennsylvania. Right now as I speak, technical adjustments
3 are being made to the U.S. Census data that the Commission
4 received earlier this month.

5 Second, given the constitutional grant of
6 authority to the Commission, there is no need for legislation
7 to reallocate prisoners. This Commission has exclusive and
8 plenary authority to draw legislative districts. Nothing in
9 the Constitution contemplates or requires action or
10 involvement by the General Assembly. It is completely
11 irrelevant that the legislatures in other States chose to
12 enact legislation to remedy prison gerrymandering. What other
13 State legislatures do is not relevant or helpful in
14 interpreting our Pennsylvania Constitution.

15 My colleagues have argued that my sponsorship of
16 legislation calling for an end to prison gerrymandering
17 somehow means that this Commission lacks authority to count
18 prisoners at their homes, but this argument fails. Proposed
19 legislation does not and cannot change the Commission's
20 authority, because this authority derives from the
21 Constitution. To be clear, I stand by the legislation I
22 propose and continue to believe it will be good for the
23 Commonwealth to have a legislative process for collecting
24 prisoner address data. But legislation is not necessary given
25 the constitutional authority conferred on this Commonwealth.

1 Third, it is the public policy of this
2 Commonwealth that incarcerated persons are treated as a
3 resident of their home communities for purposes of elections.
4 The Pennsylvania Voter Registration Act specifically directs
5 that for purposes of registration and voting, persons confined
6 to a prison shall be deemed to reside where the individual was
7 last registered before being confined, or if he or she was not
8 registered, at the last known address before confinement. The
9 Election Code also directs that no person shall be deemed to
10 have gained a residence while confined in a public prison.
11 This is not an anomaly. Prisoners are treated as residents of
12 their home communities in other legal contexts as well,
13 including for purposes of Federal diversity jurisdiction and
14 determining proper venue for legal proceedings. A leading
15 legal treatise declares it's impossible for a person to
16 acquire a domicile in the jail in which he is incarcerated.
17 There is no principled reason to treat prisons differently
18 when drawing legislative districts.

19 Fourth, reallocating incarcerated persons to their
20 home communities will not result in unwarranted disparities
21 between prisoners and college students. College students can
22 fully engage with the communities where their colleges are
23 located. With respect to voting, they have the choice of
24 registering to vote where their college is or at home where
25 they live. Incarcerated persons are not able to participate

1 in communities where they are imprisoned. In fact, if they
2 are registered and able to vote, they can only vote at their
3 pre-incarceration address. There's good reason for college
4 students and others who voluntarily maintain multiple
5 addresses to be treated differently than prisoners for
6 purposes of reapportionment.

7 Fifth, counting incarcerated persons at the place
8 where they are incarcerated invites constitutional challenges.
9 The free and fair elections clause of the Pennsylvania
10 Constitution guarantees that elections shall be free and
11 equal. The equal protection clause of the 14th Amendment of
12 the United States Constitution guarantees that all voters
13 shall have an equal vote. In other words, one person, one
14 vote. A reapportionment plan that counts prisoners as
15 residents of places where they cannot vote and have no
16 meaningful representative connection with elected officials
17 undermines both of these guarantees.

18 The record before this Commission includes
19 powerful evidence of the effect of failing to count prisoners
20 in their home communities. The experts from Villanova,
21 Professors Kramer and Remster, show that counting incarcerated
22 persons where prisons are located artificially inflates the
23 voting power of voters in those districts and dilutes the
24 voting power of voters in the prisoner's home districts. They
25 concluded that if State prisoners were counted as residents of

1 their home communities under the 2012 maps, four districts
2 would be too small, and four districts would be too large,
3 measured against a standard deviation of 5 percent. And as a
4 result, 264,000 people would be in too-large districts that
5 are constitutionally underrepresented. The same experts
6 demonstrated that minorities, people of color, are adversely
7 impacted by prison gerrymandering. They found that
8 approximately 20 percent of Philadelphia's black population
9 live in districts that only met the size of the cutoff of
10 residents because those residents were counted elsewhere.

11 Kenneth Huston, President of the Pennsylvania
12 State NAACP, showed that the political power of minority
13 voters is diluted as a result of prison gerrymandering. He
14 demonstrated, for instance, that Philadelphia is home to 12
15 percent of Pennsylvania's total population, but Philadelphians
16 make up 25 percent of State prison population, and all State
17 prisoners are held in prisons outside of Philadelphia and
18 mostly in rural and less populated counties. The Villanova
19 experts also demonstrated that counting prisoners where they
20 are incarcerated makes the surrounding communities appear to
21 be more racially diverse than they actually are. The 2012
22 maps include five districts where more than one-half of the
23 non-white population were only there because they were
24 incarcerated at the time of the Census. This empirical
25 evidence, it's unchallenged and it's unrebutted, and is

1 compelling justification for counting incarcerated persons at
2 the places they call home rather than the places where they
3 are currently incarcerated.

4 Sixth, and finally, the Commission has the means
5 to accurately reallocate incarcerated persons to their home
6 communities. On August the 6th, Jennifer Shultz, the Manager
7 of the Data Services Unit at the Penn State Data Center,
8 confirmed that the PA SDC can use the process described in her
9 proposal to reallocate prisoners with accurate last-known
10 addresses. She verified that the PA SDC was able to
11 successfully geocode 83.17 percent of in-State prisoners to
12 their last known addresses using data from the Department of
13 Corrections. The PA SDC achieved a higher level of success
14 than New York, which is at 75 percent, and Maryland, which is
15 at 77 percent, when prisoners were reallocated in those
16 States. Ms. Shultz further confirmed that the PA SDC will be
17 able to reallocate State prisoners in a two- to three-week
18 timeframe. I fully appreciate that time is certainly precious
19 given the immense amount of work we have ahead and the delay
20 of the delivery in Census data, but it is worth the time and
21 the effort to ensure equal elections and equally weighted
22 votes.

23 In closing, while we have heard great testimony
24 from various perspectives, I will conclude by saying there is
25 nothing prohibiting this Commission from reallocating inmates

1 at their home addresses. We have the authority, we have the
2 ability, and we have the data sufficient to remedy a vast
3 majority of the injustice by counting State prisoners in their
4 home communities. We cannot wait another 10 years. The time
5 to correct this injustice is now. I urge all of my fellow
6 Members to vote in favor of Resolution 4A.

7 Thank you, Mr. Chairman.

8 CHAIR NORDENBERG: Thank you.

9 Leader Benninghoff.

10 REPRESENTATIVE BENNINGHOFF: Thank you, Mr.
11 Chairman, and I appreciate the comments of Minority Leader
12 McClinton. I know she feels very passionate about this.

13 Before I get specific in my comments, I want to
14 say, you know, I've sat through many of these hearings, all of
15 these hearings in person, and actually have listened very
16 intensely. I have taken copious notes. For those of you who
17 know, I scribble a lot during meetings and write down a lot of
18 things, but I did so because I do feel very strongly, this is
19 probably a process I may only ever participate in once, and I
20 take it very serious. And in return, I've taken those notes,
21 because we've had a lot of great testimony from citizens and
22 different entities across the Commonwealth, different
23 education institutions, and I have read them and I've reread
24 them multiple times, because I feel very strongly about trying
25 to do this right.

1 Early on as a Commission, we made a commitment to
2 be as open and fair and transparent as possible. I think
3 we've tried to do that, taking advantage of today's
4 technology. And even in the beginning of the interviewing
5 process for our Chairperson, I think we sat through 39
6 different interviews, and it was actually very enjoyable and
7 educational to hear the different perspectives of those who
8 wanted to be selected as the Chairman, and we graciously
9 accepted the Court's decision on Chairman Nordenberg.

10 And with that in mind, I've thought about this a
11 lot and I prayed about it, wanting to make good decisions and
12 trying to look at this specific proposal before us as part of
13 its entirety of what this Commission's short-term
14 responsibility is. For those that may be watching, you know,
15 there's four elected officials here. One that was appointed
16 by the court, and we are appointed to a short-term, temporary
17 position as Commissioners. Once this is done, we go back to
18 our other full-time positions and the Commission disbands.
19 That's a pretty tall order for a temporary, interim,
20 short-term Commission. As one of those four elected
21 Commissioners of this board, I take this all very, very
22 seriously. And I have to say, I do have some concerns and I
23 feel appropriate that we share some of those. And the issue
24 of prisoner reallocation being taken up through the
25 legislative reapportionment, some like to title it as a prison

1 gerrymandering, I don't get into those political cliches.
2 It's about talking about different portions of our population
3 base.

4 That being said, I think it's important for those
5 that may not be here but are listening from afar, it's
6 important that we know and remind ourselves that these inmates
7 are, in fact, counted in the Census data. It's not like
8 they've been left aside. They were counted in that data
9 specifically where they're currently residing for the
10 redistricting purposes. They are counted where they eat,
11 sleep, and live, just like everyone in this room and anyone
12 that's watching from their homes. I'd also like to point out
13 that the vast majority of States allocate these prison
14 populations exactly as the State of Pennsylvania.

15 The action being proposed for us, in my opinion,
16 is outside the scope of the Legislative Redistricting
17 Commission's authority, a short-term, temporary Commission.
18 No State that ultimately made the change of taking this effort
19 to relocate prison populations has done so absent of the
20 legislative process and enacted into law. I think that's very
21 important, especially as we, for those of us who truly believe
22 in representative government, it is clear that this
23 fundamental policy change, and significant policy change,
24 require, at minimum, enactment through the deliberative
25 legislative process. Specifically so that all 203

1 duly-elected House Members' of the State of Pennsylvania and
2 50 Senators' voices be heard. Not just their voices, but the
3 very people that elected them to represent them here in
4 Harrisburg. Not just 4 of those 253 elected officials, but
5 all of them.

6 Dealing with inmate relocation would create
7 unequal treatment among equal groups and create, in my
8 opinion, some constitutional concerns. Pennsylvania law does
9 require, and I think it was stated earlier by Chief Counsel,
10 that municipalities use Census data in their own redistricting
11 efforts. The congressional redistricting, accomplished via
12 legislation, will continue to be based on the same very Census
13 data, rather than relocating part of that population that was
14 counted over the past year.

15 Furthermore, this proposal applies only to some
16 individuals living in group quarters. As stated, only about
17 80 percent of the State correctional facilities, under the
18 guise of protecting their rights and fairness. Unfortunately,
19 I think it should be noted that this proposal does not speak
20 to any other population in the Commonwealth that are similarly
21 situated, or some would call quartered populations. It only
22 speaks to, in my opinion, a subsection of the inmates. It's
23 different treatment for State and Federal inmates, it's
24 different treatment for county prisons versus State prisons,
25 and it's different treatment among group quarters, as we

1 mentioned before - military bases, long-term care facilities,
2 colleges and universities.

3 So, adopting this proposal would severely impact
4 the ability to draw State legislative districts in a timely
5 manner. In a year when the Census data is already late, and
6 we've discussed that in previous meetings, the Commission
7 still has a bulk of heavy lifting ahead of us. The
8 Pennsylvania Data Center has indicated that the proposal will
9 probably add an additional two to four weeks of work in this
10 process. That's time I don't believe the Commission simply
11 has.

12 The specifics of this proposal remain a work in
13 progress, and frankly, I don't believe is ready to be voted on
14 today. This Commission has been told that this plan will not
15 necessarily be the last. On page 3, lines 26 and 27, the
16 proposal directs the Data Center to adjust Census populations
17 "subject to the direction of any subsequent memorandum by a
18 majority vote of this Commission." It is a moving target,
19 ever changing, and as we stated earlier, the proposal before
20 us is effectively about the third different rendition that
21 this Commission, this short-term Commission, has seen just
22 since our inception. To me, this only emphasizes why the
23 Commission should decline, respectfully, one of our
24 Commissioner's invitation to pass this resolution today and
25 let it happen through the deliberative process of the

1 Legislature, those individuals, 253 Members elected by the
2 general public to make these types of major public policy
3 changes. It is for these reasons I would ask my fellow
4 Commissioner Members to reject this proposal today.

5 Thank you, Mr. Chairman. I appreciate the time.

6 CHAIR NORDENBERG: Thank you.

7 Leader Costa.

8 SENATOR COSTA: Thank you very much, Mr. Chairman,
9 and Your Honor, thank you for your analysis and the detailed
10 analysis of what has occurred here over the course of the last
11 five or so decades. When you talk a little bit about the
12 Constitutional Convention, I think it's very important for us
13 to understand and appreciate what exactly took place.

14 But before I go any further, I want to thank
15 Leader McClinton, first and foremost, for submitting this
16 resolution for us to consider. And if I could adopt her
17 remarks by reference, I guess, because I think they were
18 really spot on and exactly where my remarks were and are. I
19 will submit the balance of my remarks for the record, but
20 there are a couple points that I would like to make in
21 continued support of this resolution.

22 I guess let me first start with the points that my
23 colleague, Commissioner and Leader Benninghoff referenced with
24 respect to the participation of the 203 House Members and 50
25 State Senators. I think the analysis given by our legal

1 counsel was very clear that the intent, the Constitutional
2 Convention, was essentially to remove the legislature from the
3 process as it related to drawing lines and taking steps to
4 address that. That was as clear of a directive that I've seen
5 and heard in a long time about what role the legislature
6 should actually play in drafting these lines and how we work
7 with the data that we have before us.

8 I would also point out that it is my understanding
9 that the judge, and correct me if I'm wrong, you indicated
10 that there were 9 of the 11 States that did provide for
11 prisoner reallocation, that those States were, in fact, States
12 that the legislature had control over that reapportionment.
13 Is that correct?

14 MR. BYER: In many of the States, if not most, but
15 I don't remember if the number is nine, but in most of the
16 States I believe the legislature retained control, unlike the
17 situation in Pennsylvania.

18 SENATOR COSTA: And that's my point. It's unlike
19 what we have here. As Leader McClinton has stated, and I
20 think, Your Honor, you've stated a couple of times that
21 there's no question that we have the authority and the ability
22 to do this.

23 I also want to talk about the whole notion of what
24 you reference a number times, you used the words "fairness,"
25 and I do believe that it is fair and it's appropriate for us

1 to take steps to do and allow for the prisoner reallocation to
2 their home communities.

3 I think the concern about timeliness of being able
4 to get this done is something we certainly have to be
5 concerned about, but let's be clear, I believe every Member of
6 this Commission promised the people of Pennsylvania that we
7 would work in a very diligent and very open and transparent
8 way and to do what is necessary and do what is right by the
9 people of Pennsylvania, and that is, in my view, reallocating
10 these individuals. I think the conclusion that was reached by
11 the professors who testified, and that analysis will continue,
12 but as Your Honor stated, that by not doing the prisoner
13 reallocation, it ultimately results in unfairness in terms of
14 in that regard to the people in those districts and those
15 individuals.

16 Leader McClinton laid out six compelling reasons
17 why we should do this. We can do it, it's clear that we
18 should do it, we have the capacity to do it, we don't need
19 legislation to do it, and at the end of the day it results in
20 fairness, and that's exactly what we're here to address. So I
21 will submit my remarks for the record. I would also like to
22 submit, Mr. Chairman, this map, which reflects the
23 composition, at least as it relates to the Senate, of
24 different individuals, it goes to the inherent unfairness with
25 respect to the political process that's at stake here that

1 reflects the 20-plus locations of facilities across
2 Pennsylvania that we are talking about in this very important
3 issue. So I would submit my remarks as well as this map for
4 the record, and I will give it to Ann-Marie.

5 (Whereupon, remarks and maps were submitted for
6 the record.)

7 SENATOR COSTA: And, Mr. Chairman I strongly,
8 strongly support the efforts of my colleague, and I ask my
9 colleagues to unanimously support this Resolution 4A.

10 Thank you, Mr. Chairman.

11 CHAIR NORDENBERG: Thank you, Leader Costa.

12 Leader Ward.

13 SENATOR K. WARD: Thank you very much. Thank you,
14 everyone, for your comments. This issue certainly has a lot
15 of passion behind it, and it's had great lobbying efforts, I
16 must say. Pretty impressive. Pretty impressive.

17 So at the outset, the resolution is functionally
18 flawed in several ways. And before policy considerations can
19 be addressed, we should resolve these. Prisoners are, in
20 fact, physically located in the districts where they are
21 incarcerated. This means they're not only utilizing the
22 facilities' utilities and resources in the districts where
23 they reside, they're also using representational bandwidth.
24 And I will tell you, I don't have a prison there anymore. I
25 used to have a State prison, but Governor Corbett closed it

1 real fast and didn't tell me first. I always have to get that
2 out. So I don't have a prison anymore, but we worked with the
3 State prison. We worked with those folks if they needed help,
4 even if they were not our residents. They didn't live, you
5 know, as Representative McClinton says, forever there. We did
6 take care of them. We addressed them. And we cared. Those
7 legislators care about the prisons in there. They are using
8 local resources. So I think that moving these prisoners from
9 the district would improperly dilute the representation of the
10 individuals who live there because their facilities and their
11 utilities are all being used by the prisoners.

12 It would also create differences between how
13 prisoners are counted in congressional and municipal
14 districts, and I know that you said, Attorney Byer, that that
15 was okay, but I think it's going to make a big mess and we're
16 going to end up in court.

17 We already talked a little bit about -- I already
18 asked you about the difference there. So the resolution
19 doesn't do anything to resolve any data discrepancies that may
20 arise, particularly those due to the Census Bureau's
21 application of differential privacy. There will be
22 potentially significant discrepancies between the Department
23 of Corrections' data and the data from the Census Bureau. The
24 Penn State Data Center has indicated the LRC must determine a
25 method of resolving these discrepancies; however, the

1 resolution doesn't provide any guidance.

2 Under the current resolution, the lifers are
3 counted at the facility where they're incarcerated. That was
4 one of my questions earlier, and it makes sense. However,
5 prison sentences were not included in the data provided by the
6 Department of Corrections. So this means the data must be
7 taken care of before we can move forward, because unlike the
8 General Assembly, which has legislative oversight power, the
9 LRC does not have the authority to compel the Department of
10 Corrections to produce the data. I'm sure they would try to
11 cooperate the best they could, but we can't compel them to do
12 that.

13 You know, we keep talking about the voters, the
14 voters. If you're a felon, you aren't voting. You don't have
15 the right to vote, so that always confuses me as to why we
16 talk about one man, one vote, when you're in prison and you're
17 a felon, you don't have a right to vote. So it's been
18 suggested that the Voter Registration Act, which requires
19 prisoners who are eligible to vote to register at their last
20 known address is controlling and represents a policy of the
21 General Assembly regarding redistricting, and that is simply
22 not the case. The Voter Registration Act is clear that it
23 pertains to voter registration and not how people are counted
24 for the purpose of redistricting. Redistricting is based on
25 population, not on voters. As we know, we count children, we

1 count people who aren't registered to vote. And so convicted
2 felons, as I said, are not permitted to vote. So, if the real
3 issue is that prisoners who are eligible to vote must vote at
4 their last known address, then only they should be reallocated
5 and the convicted felons should be left and counted in their
6 facility.

7 The LRC is already under a condensed timeframe.
8 We received the Census data over four months late. The Penn
9 State Data Center has indicated that reallocating prisoners
10 will add another three to four weeks to their current
11 workload. Given the time crunch, along with other legal and
12 procedural issues that have been raised, the LRC should vote
13 against the resolution so the General Assembly can engage in
14 the deliberative process. You know, the other States that
15 used the legislature, and I know that you keep saying that
16 we're not supposed to have anything do with it, but in the
17 end, we do have something to do with it. We're all
18 legislators sitting up here, except for you, Chancellor.

19 So that ends my comments. A lot has been said
20 here today. I am not in support of this. I do think that
21 there are inconsistencies. We're doing prisoners, we're not
22 doing college students. Why aren't we doing college students?
23 Prisoners, as I said earlier, I know they're there not by
24 their choice, but they really are because they committed a
25 crime and they've been convicted of a crime and so they lost

1 their right to choose where they live.

2 Thank you very much. I know that makes me sound
3 so hard and mean, but I'm not.

4 CHAIR NORDENBERG: Well, and I will begin by
5 saying that I know you're not hard and mean. At least I'm
6 going to say that when you're within arm's length of me.

7 SENATOR K. WARD: Okay. Yeah, I'm afraid of you
8 because you said this gavel or some other means.

9 (Laughter.)

10 CHAIR NORDENBERG: Since I assumed my position as
11 Chair, the Legislative Reapportionment Commission has met nine
12 times. On each occasion, as I did today, I have opened the
13 meeting by introducing myself and the four other Members of
14 the Commission. But as I thought about this meeting, it
15 seemed as if it might be more important, particularly for the
16 members of the public who are interested, to spend a little
17 bit of time introducing the Commission itself. That process
18 began through the remarks of our Chief Counsel, so let me
19 reinforce and add to what he had to say.

20 For most of its history, the Pennsylvania
21 legislature reapportioned itself, as it does with the
22 congressional districts today. Speaking broadly but
23 charitably, experiences with that process had not been good,
24 though problems were not limited to Pennsylvania. In fact,
25 early in his book on *The Pennsylvania Reapportionment of 1991*,

1 Ken Gormley, who served as Executive Director of that
2 Commission, and who now is the President of Duquesne
3 University, quoted a commentator who had this to say about the
4 situation nationally, "[i]t is virtually impossible to find an
5 example from 1901 to 1962, of an apportionment fairly and
6 equitably performed which was voluntarily initiated by a state
7 Legislature...." The principle driver of change to this
8 nationwide record of substandard performance was the U.S.
9 Supreme Court. In its 1962 opinion in Baker v. Carr, the
10 court recognized that a State's failure to reapportion its
11 legislature could give rise to a claim under the equal
12 protection clause of the 14th Amendment to the United States
13 Constitution. Then in its 1964 opinion in Reynolds v. Sims,
14 the court established the principle of one person, one vote,
15 which has been embedded in American constitutional juris
16 prudence ever since.

17 The following year here in Pennsylvania, when the
18 legislature failed to meet its reapportionment deadline, the
19 State Supreme Court stepped in to reapportionment the State
20 itself in a 1966 case known as Butcher v. Bloom, too. This
21 was the flawed history that led legislative reapportionment to
22 be a primary focus of the Constitutional Convention in 1967
23 and 1968. The result was the proposed creation of the
24 Legislative Reapportionment Commission under Article II,
25 Section 17, of the Pennsylvania Constitution. That proposal,

1 in the form of a constitutional amendment, was approved by the
2 voters of Pennsylvania by a margin of nearly two to one.

3 Since the Commission is not like anything else, I
4 thought it might be more helpful if I described it by telling
5 you what it is not. The Commission is closely linked to the
6 legislature in the sense that four of its five voting Members
7 are the Caucus Leaders of the two Chambers. However, the
8 intentionally independent Commission was created by
9 Constitution, not by statute, and is not a part of the
10 legislature. Though the Commission's final plans are subject
11 to review by the Supreme Court, and as noted, the court has
12 the power to appoint the neutral Chair when the Caucus leaders
13 are unable to do so, the Commission also is not a part of the
14 judiciary. The Commission also is not an administrative
15 agency, most of which require the development of expertise in
16 a specialized field over a period of time, have an indefinite
17 life, possess regulatory or rulemaking powers, and are
18 embedded in and subject to the control of either the executive
19 or legislative branches. And that does create some of the
20 practical problems to which Leader Benninghoff referred a
21 moment ago.

22 So the Legislative Reapportionment Commission is a
23 one-of-a-kind entity with an important charge. Under the
24 language of the Constitution, it comes into being every 10
25 years for the purpose of reapportioning the Commonwealth. It

1 works hard in pursuit of that charge for several months and
2 then disappears for another 10 years.

3 From my perspective, the 2021 Commission's journey
4 to this point began almost three months ago, when in late May,
5 on the day before the first meeting of the Commission, my
6 assistant frantically advised me that someone from Leader
7 McClinton's office had called and that she needed to meet with
8 me that day. I didn't know what was so urgent, but I've heard
9 the old adage: When a Caucus Leader calls and asks you to
10 jump, you just ask how high. So we rearranged the calendar
11 and we did meet that day by Zoom. When I joined the call, all
12 of her team basically had assembled for this conversation.
13 And there were essentially three parts to the discussion. The
14 first was her introduction of the concept she called prison
15 gerrymandering. The second was an expression of hope that
16 this problem might be addressed through the Commission. And
17 the third was a direct question: Could she introduce a
18 resolution at our meeting the next day.

19 With respect to the concept, it was of interest to
20 me, in no small measure because I've spent much of the last
21 six years of my life working on a criminal justice reform
22 initiative in Allegheny County. So while I was not familiar
23 with prison gerrymandering, I was familiar with the
24 unfortunate consequences of mass incarceration in the many
25 forms they take. With respect to her hope that a solution

1 might emerge from the Commission, I was wary; uncertain in
2 particular of the role that the legislature might need to
3 play. In response to the question regarding her presentation
4 of a resolution, I said that on such short notice a resolution
5 could not be advanced the next day for either action or
6 serious consideration, but that if she wished to introduce it
7 as a matter of information for the Commission, that would be
8 an appropriate beginning of a more deliberative consideration
9 of the issue. And basically, the Commission has been engaged
10 in that deliberative process ever since. We've heard from
11 experts, we've heard from members of the community in person,
12 through our website, and other electronic means. Most of us
13 have done our own reading and thinking and had our teams
14 conduct research. At my request, in fact, as Chief Counsel
15 has indicated, the legal teams for each of the four Caucuses
16 submitted two sets of position papers dealing with the
17 underlying law.

18 Throughout this process, we've heard a lot about
19 being open and transparent with respect to the public, and I
20 think we've tried to live up to that responsibility. But I
21 have felt an equally powerful obligation to be open with the
22 other Members of the Commission, and so in my exchanges with
23 them, I identified key issues that I thought would need to be
24 addressed. They might be placed in two different categories:
25 practicality and power. My practicality concerns related to

1 our capacity to reallocate prisoner Census data accurately in
2 the amount of time available to us, given the pressures that
3 we already feel, both in terms of constitutional deadlines and
4 in terms of primary election deadlines, particularly in a year
5 when the Census data has been so dramatically delayed in its
6 delivery.

7 We had knowledgeable scholars testify that getting
8 data from the Department of Corrections should have been a
9 fast and easy process, and they were sincere in that
10 expression, I'm sure. But just so that the record is clear,
11 that was not our experience. Instead, it took several weeks
12 for members of the Democratic Caucus staffs who had assumed
13 responsibility for this task to get responses regarding basic
14 inquiries from the Department. I don't know what caused those
15 delays, because neither staff for the Commission, nor staff
16 from the Republican Caucuses, was included in that process,
17 and we didn't get any kind of regular reports on the status,
18 which to me, first, was an approach that was incompatible with
19 my efforts to try to develop a sense of collective
20 collegiality within the Commission, but there also are
21 pragmatic results of it.

22 Senator Ward and I were talking this morning, and
23 she was asking me about the data and what we could get when,
24 and I have no idea because I haven't been involved in that
25 process, and it is a practical problem. When the

1 professionals at the Penn State Data Center, which has a
2 contract with the Commonwealth to do this work, first reviewed
3 the Department's submission, its response can only be
4 described as negative. It raised questions about the quality
5 of the Department of Corrections' data and recommended a
6 postponement of the process of reallocation. After that first
7 response urging postponement was received, members of the
8 Democratic staff presented the Penn State Data Center with
9 suggested solutions to the problems that had been raised.
10 Again, neither members of the Commission staff nor members of
11 the Republican Caucus staff were included in that meeting.
12 And again, I considered that approach to be inappropriate.

13 However, we all did have a later chance to review
14 the proposals, which I considered to be creatively and
15 thoughtfully crafted to do the best that could be done under
16 our circumstances. I also arranged for members of the
17 Commission's staff and staff from the Republican Caucuses to
18 have their own conversations with the leaders of the Penn
19 State Data Center. The Data Center responded to the follow-up
20 proposals by essentially saying that if the approaches
21 proposed by Leader McClinton were what the Commission wanted
22 to have done, they could do it, though it would need an
23 additional two or three weeks. Just to be clear, this is not
24 two or three additional weeks to do the work they had
25 originally envisioned would be required when the request came

1 to them; it was two to three weeks to do a reduced scope of
2 work with respect to this issue. A reduced scope, I want to
3 underscore, that seemed justified because of the levels of
4 accuracy that already had been achieved by the Center dealing
5 with the data from the Department of Corrections.

6 To be clear then, and I am trying to present this
7 as the neutral Chair, which is what I am, neither the process
8 nor the product that it produced is ideal. The plan does not
9 deal, as has already been noted, for example, with those who
10 are held in Federal prisons. It does not deal with others who
11 fit into the group quarters category. However, it does deal
12 with the majority of prisoners held in custody in
13 Pennsylvania. Given the constraints on our time and the fact
14 that postponement would necessarily put off change for another
15 decade, I considered the plan, though incomplete, to be not
16 only thoughtfully responsive but a significant step forward.

17 That still left me, though, with the even more
18 basic concern of the Commission's authority, which had been a
19 concern to me from the very beginning of the process. That
20 concern, in fact, has been central to my thinking throughout
21 the process, one that I have regularly raised with Commission
22 Members and staff. However, for the reasons described by our
23 Chief Counsel, I have concluded that the Commission does have
24 the authority to act. Let me briefly elaborate, while doing
25 my best not to be repetitive.

1 First, since it was created by the State
2 Constitution, it is most important to underscore our Chief
3 Counsel's conclusion that nothing in either the U.S.
4 Constitution or the Pennsylvania Constitution precludes the
5 Commission from reallocating. Most basically, we are altering
6 a longstanding practice of the Census Bureau, which the Bureau
7 itself now is helping States to adjust, if they wish to do so.

8 Second, there is not any statutory limitation on
9 the Commission's action, nor could there be, because the
10 history of its creation reveals that while its structure was
11 intended to infuse the committee with the special wisdom of
12 experienced legislators, as is reflected by the automatic
13 membership of the four Caucus leaders, and obviously, there is
14 the influence of four votes out of five, otherwise the
15 Commission is independent. That is, we do not have an
16 independent citizens' commission, like the ones that have been
17 adopted in California and Colorado, or like the one that has
18 been the subject of so much interest on the part of reformers
19 here in Pennsylvania. However, the Commission created by
20 Article II, Section 17, of the State Constitution for the
21 purpose of reapportioning the Commonwealth is independent and
22 subject to review by the State Supreme Court, does have the
23 authority to reallocate Census data in aid of reapportionment.

24 For weeks, I had considered the precedent from the
25 other 11 States to be a barrier that would be almost

1 impossible to overcome, at least in my mind. But last week, I
2 said, let's take a closer look at the circumstances in those
3 States. And what we learned, as the Chief Counsel has
4 indicated, that in 9 of those 11 States, the legislature has
5 retained control of, or a significant level of impact on, the
6 process of legislative reapportionment. That is, there is
7 nothing that resembles the independent Commission that exists
8 here in Pennsylvania. In two of those States, independent
9 citizen commissions have been created, and in each of those
10 States, the State Supreme Courts have said that the
11 legislature has no ability to control the decision of
12 reallocation of Census data, although it can pass some kind of
13 enactments that reflect an expression of their views.

14 Further, I agree with our Chief Counsel's
15 conclusion that neither the provisions of Section 703 of the
16 Election Code nor Section 1302 of the Voter Registration Act
17 are binding because of language limiting their application to
18 registration and voting. Still, the subject areas of
19 registration and voting and reapportionment are not unrelated,
20 and so I also agree with the Chief Counsel that the language
21 that is powerful, Section 1302, for example, says, "Except as
22 otherwise provided in this subsection, no individual who is
23 confined in a penal institution shall be deemed a resident of
24 the election district where the institution is located. The
25 individual shall be deemed to reside where the individual was

1 last registered before being confined in the penal
2 institution, or, if there was no registration prior to
3 confinement, the individual shall be deemed to reside at the
4 last known address prior to confinement." That language can
5 be viewed as a strong and longstanding statutory expression of
6 legislative policy, and it would be consistent policy to count
7 prisoners for redistricting purposes in the same place they
8 could vote, if able.

9 Finally, let me comment on the Commission's
10 responsibility to do what is prudent with respect to the
11 controlling framework of constitutional law, both to
12 faithfully advance our mission within governing standards and
13 to do our best to ensure that our plan will be upheld when it
14 is ultimately reviewed. Earlier, I talked about the wave of
15 change that came in the 1960s with Baker v. Carr and Reynolds
16 v. Sims, and Butcher v. Bloom here in Pennsylvania, and the
17 State Constitutional Convention and what it produced. In my
18 mind, we would not be a prudent Commission if we did not pay
19 attention to the changes that have emerged in Pennsylvania in
20 the last decade. Those developments began with the first Holt
21 case, Holt v. The 2011 Legislative Reapportionment Commission,
22 which threw out the first plan submitted by the Commission.
23 The majority opinion in that case was written by then Chief
24 Justice Castille, a Republican. I make that point because it
25 was one of the most stinging rebukes of another governmental

1 body I ever have read. And what makes it striking is that it
2 was directed principally to the Chair of that Commission, also
3 an Appellate Court Judge and a member of the same party.

4 As I view it, the tone of that opinion, it was
5 precursor to a new level of judicial interest and involvement
6 when it comes to reapportionment. Of course, the heightened
7 interest was even more fully on display in the 2018
8 Pennsylvania Supreme Court case in the League of Women Voters
9 v. The Commonwealth. That case dealt with congressional
10 redistricting, not legislative reapportionment, and in that
11 sense, as Chief Counsel has indicated, it may not be binding
12 with respect to issues that will come before us. However, the
13 sweep of the Court's language is hard to ignore.

14 Consider just these two small quotes from a very
15 long opinion. First, the broad text of the first laws of this
16 provision, Article I, Section 5, of the Pennsylvania
17 Constitution, mandates clearly and unambiguously that all
18 elections conducted in this Commonwealth must be free and
19 equal. Second, our analysis of the free and equal elections
20 clause leads us to conclude that the clause should be given
21 the broadest possible interpretation, one that governs all
22 aspects of the electoral process and which provides the people
23 of the Commonwealth an equally effective power to select the
24 representative of his or her choice and bars the dilution of
25 the people's power to do so. These principles have clear

1 application to our ongoing work and the issue we consider
2 today.

3 During the debates at Pennsylvania's
4 Constitutional Convention in 1968, delegate Jerry Powell, a
5 Republican from Levittown, said, "A plan which places a number
6 of citizens in a legislative district in which they can have
7 virtually no hope of affecting the outcome of an election or
8 the official conduct of the elected legislators can as
9 effectively disenfranchise those people as a population
10 imbalance." When a system holds and counts a person in one
11 place but forces him or her to vote in another, it does create
12 a basic issue of fairness. And looking at the impacts more
13 broadly, as we have been told by other experts, and as has
14 been confirmed by Dr. Cervas, it distorts the reapportionment
15 process by giving certain classes of voters, in this case
16 voters living in districts with State correctional
17 institutions, votes that carry more weight than the votes cast
18 in districts that do not include such institutions.

19 I regret that the first substantive decision we
20 make is going to leave two Commissioners feeling as if they
21 won and two Commissioners feeling as if they lost, because I
22 know that this is the first of a number of decisions, maybe a
23 countless number of decisions that will be made over the
24 course of the weeks ahead which will give everyone a chance to
25 feel as if they have won and lost. And because I believe in

1 avoiding surprises, I also do apologize, to the extent anyone
2 is surprised by my position today, because I have been zealous
3 in probing the case that has been presented for this
4 resolution. And so in a way, I've been surprised myself.
5 That is, for most of the last three months I did not think I
6 would be where I am today.

7 Earlier, I suggested that some of us are taking a
8 crash course in reapportionment and the Commission. Senator
9 Costa is the only battle-scarred veteran of earlier service.
10 And in going through that crash course, I kept my mind open, I
11 kept learning, and here I am. I don't think that this is an
12 ideal resolution. I don't think it is an ideal step forward,
13 but I do think we can't wait for another 10 years, and so I am
14 prepared to support the resolution, subject to any changes,
15 perhaps, that might come through our discussion.

16 So, I'm not sure if I wore you all out or whether
17 there are things that other Commissioners want to say.

18 Leader Benninghoff.

19 REPRESENTATIVE BENNINGHOFF: Thank you, Mr.
20 Chairman. I know that you probably spent as much as time as I
21 have deliberating over this. The good news is I've run out of
22 ink, and no more paper to write any more notes, so I will
23 spare you a long, windy thing. But I did want to make three
24 quick comments.

25 I know this decision is not easy for anybody, but,

1 you know, I've visited in different prisons throughout our
2 Commonwealth and visit with inmates, I even sat and met with
3 two groups of lifers several times just to try to get a better
4 comprehension of that environment. But one thing that stuck
5 out to me, which I think we need to keep in mind, is, I think
6 we're making a lot of assumptions, and assumptions are being
7 made about inmate behavior subsequent of discharge. But the
8 one thing I will make note has been shared with me by
9 different parole people, guards, and other people who have
10 worked on the treatment side of corrections, is one of the
11 largest populations in our prisons, especially at least at the
12 State level, are those that have been incarcerated for illegal
13 drug use, selling, or trafficking. And one of the consistent
14 messages that is given to many of these inmates prior to a
15 release, as they try to finish these rehabilitative programs,
16 is, don't return to the same environment from whence you came.
17 If we are to see change in behavior and truly rehabilitate
18 someone, it is highly recommended that they do not return to
19 the same neighborhoods and environment from whence they came.
20 So I think that needs to be considered, that we're making an
21 assumption that if released today, everybody is going to
22 return back from whence they came.

23 Number two, I've heard it said over and over about
24 the fairness of the possibly of having districts currently
25 that are not properly represented, and some of those

1 individuals that are non-incarcerated having a subsection of
2 their population based in that district not being properly
3 represented by making those districts unfair to the
4 neighboring districts because some of their population is
5 incarcerated. So if that's the case, the question does beg to
6 ask, are we not just pushing water from one side of the
7 balloon to the other? If we're now going to push population
8 back into other districts of which they don't even live in,
9 are we not now diluting or changing the overall effect of that
10 legislative district? I don't have an answer for it, but you
11 guys can think about it.

12 And the last thing I would offer, and I appreciate
13 the patience of both the Counsel, the Commission, and the
14 Chair, I believe Chief Counsel had mentioned Dr. Cervas'
15 analysis and that data, which I believe some of his comments
16 were predicated on, and data that we, as a Commission, surely
17 need to have as we finish this process. But the fact that
18 that data is not complete and readily available to us, it begs
19 to ask the question, why would we be making such a major
20 policy change without all that information today, and is today
21 the right day to do that?

22 Thank you, Mr. Chairman.

23 CHAIR NORDENBERG: Thank you. And I will say that
24 not only do I know that Leader Benninghoff has been very
25 attentive to this issue, but he and I have sat next to each

1 other through almost every meeting and hearing, and he's been
2 attentive to all other issues as well.

3 I know that there are some questions that Senator
4 Ward has. The procedural issues that they may present are not
5 resolved--

6 SENATOR K. WARD: Put that down.

7 CHAIR NORDENBERG: --by this mallet.

8 (Laughter.)

9 CHAIR NORDENBERG: And it may well be that this
10 gets back to I don't know anything about the legislative
11 research, reference, LRB, whatever it is, that these have got
12 to be introduced by her formally as resolutions following a
13 vote on this resolution. But I think you should at least
14 advise the other Commissioners of the topics of interest that
15 you have so that it seems fair that they would be aware of
16 them.

17 SENATOR K. WARD: Okay, so I'm going to offer two
18 resolutions, and one is that the LRB come up with two sets,
19 both sets of data for the number of voters. A set of data
20 that -- I can read it to you, but I'm just going wait, a set
21 of data that is based on the Census as it now is, and one with
22 the change that we were going to do today, moving the
23 prisoners, so that we have both sets, should there be a reason
24 that we need them. It's not going to take any more time than
25 they're already going to have, and we are just going to be

1 guaranteed, if this ends up, and I don't know that this is
2 going to happen, but wonder if this ends up in court, wonder
3 if something happens. It's just a protective process.

4 And the second one is, if you are in a facility,
5 if there is a prisoner in a facility for 10 years or more,
6 that they be excluded from being moved back to where they had
7 lived in the past, because that covers the 10-year Census.

8 CHAIR NORDENBERG: Again, those matters will be
9 raised, I'm told, as resolutions subsequent to a vote on this
10 issue.

11 I wonder if I could ask you, Leader McClinton, a
12 question, and that is, you have created an exception for those
13 who are sentenced to life in your resolution. Do we know if
14 the Department of Corrections is prepared to submit that data
15 to the Penn State Data Center in a timely fashion?

16 REPRESENTATIVE McCLINTON: First of all, Mr.
17 Chairman, I want to thank you for your very thorough and
18 thoughtful analysis and approach to this issue. It is rather
19 complex, and listening first to our Chief Counsel, His Honor,
20 and hearing your thoughts, I took copious notes to really
21 follow through. So thank you for taking the time.

22 But currently, the data is not available
23 immediately.

24 CHAIR NORDENBERG: I guess we don't know what that
25 means, but I guess we vote on the resolution assuming that the

1 data can be gathered in an appropriately compressed period of
2 time. And if that does not happen, and if we find the kind of
3 delays that would really put in jeopardy the goals we have for
4 ourselves in drawing district lines, we may come back and have
5 to revisit how we're going to approach this.

6 Does that sound fair enough to the proponent and
7 the second?

8 REPRESENTATIVE McCLINTON: Yes, it does, Mr.
9 Chairman.

10 REPRESENTATIVE BENNINGHOFF: Are you preparing to
11 make a call for the vote?

12 CHAIR NORDENBERG: Yes, I am.

13 SENATOR COSTA: Before you--

14 REPRESENTATIVE BENNINGHOFF: Can I ask a quick
15 parliamentary question? Excuse me, Senator Costa. Unless I'm
16 misunderstanding, I thought that Senator Ward has actually
17 made a motion, and I want to confirm that, of the two
18 resolutions, or was that just a general discussion? And if
19 therefore she made that motion, obviously, we need to either
20 act on that, and if not, we can proceed with the full vote.

21 CHAIR NORDENBERG: Actually, after a discussion
22 with Senator Ward and her counsel, their intention is,
23 consistent with the parliamentary process as they understand
24 it, to introduce those resolutions after we vote on the
25 resolution that now is on the table. But I deviated from what

1 might have been normal process because I thought people should
2 be aware of the substance of her thinking before we do vote on
3 this proposal.

4 REPRESENTATIVE BENNINGHOFF: I appreciate that
5 clarification, sir.

6 CHAIR NORDENBERG: Senator Costa.

7 SENATOR COSTA: Thank you, Mr. Chairman.

8 Let me first say, I thank you for your thorough
9 analysis as well. But I want to address a couple of things.

10 One, your comments with respect to working with
11 the Department of Corrections, I think at this point, given
12 the question that was raised with respect to life prisoners,
13 that we as a body, as a Commission, reach out to the
14 Department of Corrections as soon as we can to try to get that
15 information so there's no issue along those lines. And I
16 think it should be done, if we have to take a motion and a
17 second and vote to do that, I recommend we do that as a formal
18 action by this Commission.

19 The second thing is, I just want to point out a
20 couple of things with respect that were raised that I failed
21 to raise earlier but were picked up, I think, in Senator
22 Ward's comments regarding the difference between what will
23 happen in the congressional seats and what will happen in our
24 seats. In 2011, as you mentioned, I served on that
25 Reapportionment Commission, and one of the things that we did

1 at that time was, in the General Assembly, we adopted a
2 resolution that adopted the Census data that came out of our
3 Reapportionment Commission. So as a way to alleviate the
4 disparity or difference between those two, legislative
5 districts and congressional districts with respect to
6 population and Census data, we still have that opportunity to
7 adopt, at that point in the legislature, to accept the data
8 that we come up with finally. So I think that's an option
9 that's available to us.

10 And finally, on one of the things is the concern
11 that was raised about the differences between the Federal
12 stuff and the legislative stuff, it's important to note that
13 one of the issues that we have a difference in terms of this
14 process relates to deviation. We permit a significant
15 deviation, up to 10 percent. We heard testimony everywhere
16 from 2 percent to 10 percent would be acceptable. That's not
17 the case, as I understand it, with the Federal districts,
18 where there is no deviation that exists there. So the point I
19 raise is, for the record primarily, and for the appellate
20 review that Senator Ward talked about, I wanted to make sure
21 these issues were on the record to reflect that there are
22 differences along those lines and there are ways in which we
23 could address those differences as well through the
24 legislative process.

25 Thank you, sir.

1 CHAIR NORDENBERG: It also should be noted that
2 the congressional districts are so much larger and much more
3 heavily populated that the impact of the allocation practice
4 would not be as pronounced in those districts.

5 Is there any other discussion?

6 Yes. Leader McClinton.

7 REPRESENTATIVE McCLINTON: Thank you, Mr.
8 Chairman. I just want to echo Leader Costa's recommendation
9 that this Commission reach out to the Department. Members of
10 my team were doing their absolute best reaching out throughout
11 the summer, but the Commission should just go ahead and do it
12 so that we're not in any precarious predicament and so that we
13 are doing everything with full transparency. So that is my
14 request of joining Leader Costa's ask, that you and your team
15 specifically reach out to the Department directly.

16 CHAIR NORDENBERG: Well, we can talk about that in
17 a moment. But at this moment, the resolution presented by
18 Leader McClinton, and seconded by Senator Costa, is on the
19 table for a vote.

20 All in favor, please say "aye."

21 SENATOR COSTA: Aye.

22 REPRESENTATIVE McCLINTON: Aye.

23 CHAIR NORDENBERG: Aye.

24 All opposed?

25 SENATOR K. WARD: Aye.

1 REPRESENTATIVE BENNINGHOFF: No.

2 SENATOR K. WARD: No aye. I'm a no.

3 CHAIR NORDENBERG: Somehow we knew that. And the
4 record should reflect that those voting in favor were Leader
5 McClinton, Leader Costa, and me, and that both Leader
6 Benninghoff and Leader Ward voted "no."

7 Now, I would like to turn to the two resolutions
8 that Majority Leader Ward would like to present.

9 SENATOR K. WARD: So this resolution, providing
10 for the submission of two final data sets to the Legislative
11 Reapportionment Commission, "RESOLVED, That the State Data
12 Center submit to the Legislative Reapportionment Commission
13 two final data sets, one with the population adjusted on the
14 basis of residence of individuals incarcerated in State
15 correctional facilities and one without the population data
16 adjusted on the basis of residence of individuals incarcerated
17 in State correctional facilities."

18 CHAIR NORDENBERG: Is there a second to that?

19 REPRESENTATIVE BENNINGHOFF: I second that, Mr.
20 Chairman.

21 REPRESENTATIVE McCLINTON: Point of order, Mr.
22 Chairman.

23 CHAIR NORDENBERG: Yes.

24 REPRESENTATIVE McCLINTON: I would ask that this
25 be delayed so we have an opportunity to consider it. Per your

1 exchange, resolutions had to be turned in last Tuesday.

2 CHAIR NORDENBERG: Well, the only thing that I
3 would say, and again, I'm not a parliamentarian, despite my
4 carrying this big club, is that this seems to me to be
5 something we should be doing any under any set of
6 circumstances. To the extent that we don't know, or we
7 probably can assume there is a good likelihood that the
8 legislature itself is going to travel a different path, then
9 two different calculations are going to be required. So
10 they're already moving forward to finally process the data
11 that would be required for elections without reallocation, and
12 I know that it will be easier for the Penn State Data Center,
13 the sooner we get them working on the data that is affected by
14 the reallocation. So I don't know if there is an objection
15 based on timing, but I would ask that you waive it, because I
16 think this is just a pragmatic way of moving forward.

17 REPRESENTATIVE McCLINTON: Understood, Mr.
18 Chairman. Is there a copy so I can just simply read it?

19 (Documents handed to Commissioners.)

20 CHAIR NORDENBERG: There is a discussion up here,
21 and there is widespread parliamentary agreement that because I
22 say something, it's not a rule.

23 REPRESENTATIVE BENNINGHOFF: You're quickly
24 learning there's not a lot of glory in being in charge.

25 (Laughter.)

1 CHAIR NORDENBERG: Well, I do think that we should
2 deal with the first resolution, because it really is just -- I
3 think putting the Penn State Data Center and our own
4 Legislative Data Processing Center on notice that there are
5 two sets of data that are going to be needed, I don't think we
6 should pull back in any way on the data that is not
7 reallocated, because that would be doing a disservice to the
8 legislature. And in terms of moving your proposal forward,
9 we've got to get that data done, too. So.

10 REPRESENTATIVE McCLINTON: And I've had a chance
11 to read it, so thank you, Mr. Chairman.

12 SENATOR COSTA: Mr. Chairman, if I could. And I
13 join Leader McClinton's concern, not necessarily about the
14 timing of this, not having the opportunity to read or discuss
15 with our counsel and our folks the purpose behind it. I'm not
16 quite sure why it is that we're going to have two sets of
17 data. Is it in anticipation of another vote of some sort by
18 this Commission with respect to this issue, or is it in
19 anticipation of a potential court case that may come down and
20 say we shouldn't do that? I mean, at that point in time, we
21 will be long down the road. We're talking January, February,
22 maybe, or this late December decision with respect to a
23 Supreme Court decision that would reverse what we're doing
24 here. So we have ample time to be able to reconsider what we
25 do at that point in time, as opposed to doing it today, when

1 we just got notice of this.

2 When we were faced with a similar situation when
3 Leader McClinton presented her resolution initially, it was,
4 in fact, delayed to allow us the opportunity to, you know,
5 talk about it. So I think in this particular instance, on
6 this one in particular, on both of them, I think they're
7 untimely and I think we should have a conversation about
8 delaying this conversation until a later point in time.

9 Thank you, Mr. Chairman.

10 SENATOR K. WARD: There's nothing nefarious in
11 this, Senator Costa.

12 SENATOR COSTA: I'm not suggesting that there is.

13 SENATOR K. WARD: It just says that if we don't
14 have the numbers, if for some reason it doesn't work that we
15 get the numbers, can they get them to us? Are they going to
16 get them to us? Are we going to run into an issue? We have a
17 backup.

18 SENATOR COSTA: Yeah. Well, I would argue that, I
19 mean, as we now know, the numbers that we've received, the
20 Census data we've received, it's been testified to, I believe,
21 and also been reported from the Census Bureau that the data we
22 have now is probably more than likely to be identical to the
23 data that we're going to get at a later point in time. So we
24 do have that body of data available to us right now that we
25 can preserve as a set of data that we can look at, as well as

1 looking to do what needs to be done with respect to the prison
2 reallocation.

3 SENATOR K. WARD: Correct, but I'm referring to
4 the Department of Corrections getting us all the data that we
5 need for this. As Senator -- oh, I just called you Senator
6 McClinton. Uh-oh.

7 SENATOR COSTA: That's not my district. I'm not
8 worried.

9 SENATOR K. WARD: You know, we don't have an
10 answer from them whether they can do it or not, or when
11 they're going to do it, and I know we have to push them, but
12 this is nothing nefarious. It is just--

13 SENATOR COSTA: And I appreciate it.

14 SENATOR K. WARD: --a backup plan. So thank you.

15 SENATOR COSTA: And I'm not suggesting that there
16 is. That's where I find it.

17 REPRESENTATIVE BENNINGHOFF: Mr. Chairman, if I
18 may.

19 Very quickly, I think Leader Ward is asking for a
20 reasonable request here. You know, I contemplated whether I
21 wanted to vote on the last thing or should we delay that, but
22 out of respect to the work and the dialogue that went on with
23 that, I did not make a motion to delay that, and I don't think
24 that we should make a motion to delay this either. It's very
25 simply asking, because I was, frankly, uncomfortable voting on

1 something that I didn't feel had all the data in. This is
2 before us, it's six, seven, eight lines right before us and
3 basically saying that you as a Commissioner, and I as a
4 Commissioner, should have this data available to us in both
5 subsets. And, frankly, none of us are accountable for what
6 the Department of Corrections may or may not be able to do in
7 a timely manner, and I would ask for the support of this
8 resolution.

9 CHAIR NORDENBERG: If there is no other
10 discussion, let me call the question on this resolution
11 presented by Leader Ward.

12 All in favor, please say "aye."

13 SENATOR K. WARD: Aye.

14 REPRESENTATIVE BENNINGHOFF: Aye.

15 SENATOR COSTA: Aye.

16 REPRESENTATIVE McCLINTON: Aye.

17 CHAIR NORDENBERG: Aye.

18 Any opposed?

19 (There was no response.)

20 CHAIR NORDENBERG: That resolution passes.

21 You have one other to present, I believe.

22 SENATOR K. WARD: I do. I have this, and I know
23 that it's late getting to you, but I have talked about this in
24 many of our hearings about prisoners who are in a facility or
25 sentenced to 10 years or more in prison. They didn't do any

1 small crime. And they are in -- they are living in the
2 districts where the prison is. That's where they live. So I
3 can read it. Would you like me to read it? You all have it.

4 For the record, "Providing for residence of
5 incarcerated individuals for the purpose of creating the
6 reapportionment plan for the General Assembly.

7 "RESOLVED That the population total used after the
8 Federal Decennial Census of 2020 by the Legislative
9 Reapportionment Commission for the purpose of legislative
10 reapportionment for the General Assembly count an individual
11 who is incarcerated in a State correctional facility, as
12 determined by the census, and who was a resident of this
13 Commonwealth immediately prior to being sentenced to
14 incarceration:

15 "(1) except as provided under paragraph (2):

16 "(i) at the address, as reported by the
17 Department of Corrections, where the individual was last
18 domiciled in this Commonwealth immediately prior to being
19 sentenced to incarceration;

20 "(ii) if the individual was homeless
21 immediately prior to being sentenced to incarceration, at the
22 location in this Commonwealth, as reported by the department,
23 where the individual regularly stayed or regularly received
24 services immediately prior to being sentenced to
25 incarceration; or

1 "(iii) if there is no address under
2 subparagraph (i) and no location under subparagraph (ii), at
3 the facility where the individual is incarcerated.

4 "(2) if the individual is subject to a sentence of
5 10 years or longer, at the facility where the individual is
6 incarcerated."

7 And let me just end by saying, whoever writes
8 these, they're not actually saying them out loud. There are
9 no commas. There are no commas. I'm like, is there a comma,
10 a period?

11 CHAIR NORDENBERG: Well, punctuation marks or not,
12 you handled it well.

13 Is there a second to this motion?

14 REPRESENTATIVE McCLINTON: Chairman.

15 REPRESENTATIVE BENNINGHOFF: I'll second that
16 motion.

17 CHAIR NORDENBERG: Yes.

18 REPRESENTATIVE McCLINTON: Before you call for a
19 second, may I be recognized?

20 CHAIR NORDENBERG: Representative McClinton.

21 REPRESENTATIVE McCLINTON: Thank you, Mr.
22 Chairman.

23 Mr. Chairman, this resolution materially changes
24 my resolution which I brought forward in May, not expecting a
25 vote the first time, knowing that we would need time to

1 discuss it, to hear from citizens, to hear from advocates and
2 stakeholders. Unlike the previous resolution that we just
3 received and voted favorably for, this makes material changes
4 for the prison gerrymandering resolution which we've been
5 working on for months. So as a result, I'm asking for the
6 opportunity to be able to discuss this, to get public comment,
7 to get feedback, because it undoes almost what we just did,
8 after spending the entire summer working to get the
9 opportunity to call up my resolution for a vote.

10 SENATOR K. WARD: There was no way to amend your
11 resolution. This is what I wanted to amend, but there's no
12 number, so we couldn't amend. So the only way to address the
13 fact that people that are in facilities for 10 years or 15
14 years or 20 years was to do an additional resolution.

15 CHAIR NORDENBERG: Can I make what is, I hope, a
16 practical and collegial suggestion, because I do think
17 everybody has kind of taken a leap of faith today. We're
18 saying we're going to do things, but we don't have all the
19 data, turns out we don't know when we're going to have all of
20 the data. Without voting on this resolution today, because I
21 do agree that it requires some thought, can we agree that when
22 we go to the Department of Corrections to find out what data
23 is available, we ask them both about the data availability for
24 those who have a life sentence and those who have a sentence
25 of 10 years or more? And then we'll know what we can do

1 practically, and we will have time, too, to think about
2 Senator Ward's idea and to get a sense of how many people
3 might be affected. So we'll be much better informed to deal
4 with this issue, which is an important one.

5 SENATOR K. WARD: Sure, and I accept that. And
6 like you said, if we don't do it now, it won't be for 10
7 years. So I look forward to that data and seeing if we can
8 then move forward, depending on the numbers. Thank you.

9 SENATOR COSTA: So, Mr. Chairman, a quick
10 question. We'll end up -- what you're proposing is that we
11 end up with three separate data sets, one which was Senator
12 Ward's original one said without prisoner reallocation, one
13 with prisoner reallocation, pursuant to the resolution which
14 would include life folks being excluded, and now a third one
15 which will be 10-year folks excluded--

16 CHAIR NORDENBERG: Well.

17 SENATOR COSTA: --as well in addition to the life
18 folks being included?

19 CHAIR NORDENBERG: We'll least find out what data
20 is available, and easily available. It may be that data on
21 the 10-year sentencing is not very readily available, but at
22 least we'll know.

23 REPRESENTATIVE McCLINTON: The other thing that
24 should be included in a resolution of this sort is how much
25 time is remaining to be served. We can't just loop people

1 because they have a sentence of more than 10 years. What if
2 their sentence was 10 to 20 years but they've served 19?
3 They're not going to be there for the next set of Census data
4 when the population is recounted in 10 years. So that's a
5 factor that creates a serious -- a bit of chaos for this
6 evaluation. It's not as simple as saying, oh, your sentence
7 is beyond 10 years. What if you have served a majority of it,
8 you have a parole board hearing coming up? I mean, we don't
9 want to go too far into the granular, because this will then
10 become mission impossible, which it is not.

11 CHAIR NORDENBERG: So, again, I agree with that,
12 too. So why don't we find out what kind of data is available
13 or could be made available within a reasonable period of time,
14 and then we'll come back to the Commission.

15 And the only thing I ask is this: Scheduling
16 meetings of this group, because you're all so busy, is a
17 monumental task. And if we're really committed to this issue,
18 it can't be that we're going to get together at the second
19 half of September to deal with this. We'll reach out to the
20 Department of Corrections, we'll see what we can find out
21 quickly, we'll share that information with everyone, and then
22 we'll decide about whether there are actions to be considered
23 in the short term. And again, I'm not trying to trick anybody
24 into anything either. I'm just trying to make sure we can
25 keep moving forward, because, as you said, this process

1 started, I think, on May 26th in your office, and most of the
2 summer we were waiting, and I'm still not sure why we were
3 waiting, but it was a lot of weeks that went by when we
4 couldn't get together and discuss this, which I had hoped
5 would be the case, because soon we're going to have to start
6 dealing with data and district boundaries, which clearly is
7 our responsibility.

8 SENATOR COSTA: So, Mr. Chairman, can I ask what
9 we have before us? We've adopted Leader McClinton's
10 resolution, and we adopted Leader Ward's first resolution.
11 The second resolution, we're going to table it for now?

12 CHAIR NORDENBERG: Yes, we're going to hold that.

13 SENATOR COSTA: Okay. And then we'll make that
14 determination with respect to the accessibility of the data?

15 CHAIR NORDENBERG: Yes. Because I do think --
16 there's no way we can't go forward with two sets of data, at
17 this point. But whether it's a third or not, let's see what
18 we can get.

19 Our next agenda item, which I know will be a brief
20 one, if you have the patience, is a quick presentation by the
21 Executive Director of the Legislative Data Processing Center
22 on the status of data receipt and processing. And what I am
23 going to say, because it's a quarter to 1:00, and I know some
24 people have specific -- some are hungry, and some have other
25 places to be -- is that I know Brent will be willing to stay

1 and deal with specific questions once he has provided us with
2 this framework. But we at least should have everybody hear
3 the general messages that he wants to share.

4 MR. McCLINTOCK: Good afternoon, Chairman and
5 Commissioners. Thank you for the opportunity to speak again.

6 So in the hearing on July 13th, I spoke to you
7 about the work that my office and the Penn State Data Center
8 were doing to prepare for the release of 2020 Census PL 94-171
9 data. This population data set, in combination with the
10 Census geography that was released in February, is certified
11 by the Commission and used as the basis for legislative
12 redistricting. Today, I wanted to update you on the status of
13 this data.

14 On Thursday, August 12, the Census did release the
15 PL data to each State on their FDP website. LDPC and our
16 selected vendor at the Penn State Data Center immediately
17 began to download and process these files. The Data Center is
18 now reviewing and adjusting the Census data, and the types of
19 adjustment that they found are necessary include the
20 following:

21 One, adjusting election precincts that were
22 altered after December of 2019.

23 Two, creating split blocks required by recent
24 precinct boundary changes and adjusting population if needed.

25 And three, correcting errors in the Census data

1 including block coding errors and voting district name and
2 code errors.

3 After this data is adjusted, the Data Center will
4 then join the population data into the geography files that
5 have been adjusted. Once these adjustments are completed,
6 LDPC, my office, will then receive the adjusted data and
7 review it for accuracy. This data will then be presented to
8 the Commission in usable form to be certified.

9 In previous decades, this data was received before
10 April and required more than four months of work in
11 processing. Due to the delays in the receipt of this data
12 from the Census, caused by COVID, we understand that every
13 effort needed to be taken to expedite this process, so both
14 LDP and the Data Center have worked ahead to complete as much
15 as possible prior to the release of the data, and at this time
16 we do believe that we are ahead of schedule and that we may be
17 able to -- that we were planning to present the Commission
18 with data that could be certified by the end of September,
19 which would have resulted in a reduction of about eight weeks,
20 as compared to previous decades. The discussions today have
21 obviously changed those conversations, but we will continue to
22 work on this project and will present the Commission with data
23 as soon as possible.

24 CHAIR NORDENBERG: All right. And why don't we
25 say, too, that I will follow up with Brent. And we'll try to

1 get a sense, or he will try to get a sense, from the Penn
2 State Data Center about where they are, how much time can be
3 saved if they're doing some of these things together. And I
4 don't know, we may already been beyond that point. But then
5 we'll get back to you so that everybody on the Commission has
6 a sense of where we stand, because I know we're all very
7 sensitive to the timing with some of these deadlines looming.
8 Thank you.

9 If there is no further business to come before the
10 group -- I needed to use this once.

11 SENATOR K. WARD: See that security guy back
12 there? I called him because of you.

13 (Laughter.)

14 CHAIR NORDENBERG: I declare this meeting
15 adjourned. Thank you, all.

16 (Whereupon, the proceedings were concluded at
17 12:46 p.m.)

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25

1 I hereby certify that the proceedings and evidence
2 are contained fully and accurately in the notes taken by me
3 during the hearing of the within cause, and that this is a
4 true and correct transcript of the same.

5
6
7
8 
9

10 ANN-MARIE P. SWEENEY
11 Official Reporter
12 Legislative Reapportionment
13 Commission
14

15 THE FOREGOING CERTIFICATION DOES NOT APPLY TO ANY
16 REPRODUCTION OF THE SAME BY ANY MEANS UNLESS UNDER THE DIRECT
17 CONTROL AND/OR SUPERVISION OF THE CERTIFYING REPORTER.
18
19

20 ANN-MARIE P. SWEENEY
21 Official Reporter
22 Legislative Reapportionment Commission
23 P.O. Box 203079
24 Harrisburg, PA 17120
25

EXHIBITS

CORRECTION SHEET

[illegible]

MEETING MINUTES
2021 PA LEGISLATIVE REAPPORTIONMENT COMMISSION

Date and time of meeting: May 26, 2021 4:00-5:00 p.m.

Location: Senate Hearing Room #1, North Office Building

AGENDA

1. Call to Order and Welcome
2. Resolution Regarding Appointment of Deputies
3. Selection of Chief Legal Counsel
4. Selection of Executive Director
5. Selection of Stenographer
6. Future Staff Appointments
7. Administrative Resolutions
 - a. Resolution Adopting the Financial Operating Rules of the Senate
 - b. Resolution Regarding Right-to-Know Law
 - c. Resolution Regarding Official Minutes
 - d. Resolution Authorizing Remote Participation in Meetings
8. New business/Discussion
9. Adjournment

Chair Mark Nordenberg called the meeting to order at 4:00 p.m.

He then recognized the other members of the Commission in attendance:

- House Majority Leader Kerry Benninghoff
- Senate Democratic Leader Jay Costa
- House Democratic Leader Joanna McClinton

Senate Majority Leader Kim Ward was unable to attend but was being represented by Senator Kristin Phillips-Hill.

Chair Nordenberg thanked the citizens of Pennsylvania in attendance at the meeting or watching the live stream telecast. Before dealing with the resolutions, he asked for comments from any of the Commissioners.

Commissioner Benninghoff congratulated Chair Nordenberg on his appointment and stated that he looked forward to working with the Chair and the other members of the Commission. He also endorsed the use of various technologies to allow the maximum participation possible by the members of the Commission as well as the public at large.

Commissioner Costa expressed words of appreciation to Chair Nordenberg on his appointment and stressed the importance of the redistricting work of the Commission. He also endorsed the value of using technology to assure a fair, transparent and inclusive process.

Commissioner McClinton thanked Chair Nordenberg for taking on this assignment, citing there are 13 million citizens across the Commonwealth who are eager to engage and participate in the redistricting process.

Senator Phillips-Hill extended the best wishes of Senator Ward to Chair Nordenberg. She also noted that Senator Ward is wanting a fair and transparent redistricting process.

Chair Nordenberg noted that the resolutions listed on the agenda had been previously distributed to the Commissioners and posted on the Commission's website.

Resolution #1A – Appointment of Deputies

It is hereby resolved that Commission Members shall be authorized, pursuant to Article II, Section 17 (b) of the Pennsylvania Constitution, to deputize another Member of the House or Senate to participate and vote in their stead when necessary; however, no individual other than a Member of the Pennsylvania Legislature shall be authorized to serve as a Deputy with voting privileges. The Chairman of the Commission shall in no instance be authorized to deputize an individual to vote in his stead.

- Motion by Commissioner McClinton to adopt the resolution

- Second by Commissioner Costa

- All Commissioners voted Aye

Senator Phillips-Hill did not vote on this resolution but once it passed, she voted on other matters.

Resolution #1B – Selection of Chief Legal Counsel

It is hereby resolved that Robert L. Byer be appointed Chief Legal Counsel for the Commission.

- Motion by Commissioner Benninghoff to adopt the resolution

- Second by Deputy Commissioner Phillips-Hill

- All Commissioners and the Deputy Commissioner voted Aye

Resolution #1C – Selection of Executive Director

It is hereby resolved that G. Reynolds Clark be appointed Executive Director of the Commission.

- Motion by Commissioner Costa to adopt the resolution

- Second by Commissioner McClinton

- All Commissioners and the Deputy Commissioner voted Aye

Resolution #1D – Selection of Stenographer

It is hereby resolved that Ann-Marie Sweeney be appointed stenographer for the Commission.

- Motion by Commissioner McClinton to adopt the resolution
- Second by Deputy Commissioner Phillips-Hill
- All Commissioners and the Deputy Commissioner voted Aye

As this time, Chair Nordenberg noted the agenda had listed the subject of Future Staff Appointments. Chair Nordenberg stated that there was no action needed to be taken on this matter at this time. He knows the Commission will be receiving the official census data much later than the normal schedule for previous Commissions, thus putting the Commission under some very significant time pressures.

Also, Chair Nordenberg is anticipating that citizen participation via correspondence along with a much higher volume of map submissions will probably require further additions to the office staff including securing technical expertise.

Chair Nordenberg then introduced Item 7 on the agenda, Administrative Resolutions:

Resolution #1E – Adopting the Financial Operation Rules of the Senate.

It is hereby resolved that the Commission shall adopt in full the current Financial Operating Rules of the Senate to govern expenses, personnel policies and other administrative matters.

Commissioner Benninghoff asked for a clarification as to how the distribution of funds to pay the Commission's staff will be handled. Chair Nordenberg stated that funding would come through the Office of the Clerk of the Senate. Chair Nordenberg then asked for a motion.

- Motion by Commissioner Costa to adopt the resolution
- Second by Commissioner Benninghoff
- All Commissioners and the Deputy Commissioner voted Aye

Resolution #1F – Regarding Right-to-Know Law

It is hereby resolved that the Legislative Reapportionment Commission is subject to the Right-to-Know Law as a legislative agency. It is further resolved that, until such time as the Commission has a staff member to fill this role, the open-records officer for the Legislative Data Processing Center shall serve as the open-records officer for the Commission.

- Motion by Commissioner McClinton to adopt the resolution
- Second by Deputy Commissioner Phillips-Hill
- All Commissioners and the Deputy Commissioner voted Aye

Resolution #1G – Regarding Official Minutes

It is hereby resolved that the Executive Director shall be authorized to prepare Official Minutes on behalf of the Commission, which Minutes shall be ratified, with appropriate amendments, at the next public meeting of the Commission. Copies of such official minutes shall be made available to the public, after ratification, in accordance with the Right-to-Know Law.

- Motion by Deputy Commissioner Phillips-Hill to adopt the resolution
- Second by Commissioner Costa
- All Commissioners and the Deputy Commissioner voted Aye

Resolution #1H – Regarding Remote Meetings and Remote Participation in Meetings

It is hereby resolved that the 2021 Legislative Reapportionment Commission shall be authorized to conduct in-person, remote and hybrid hearings and Members of the Commission or their designated Deputies shall be authorized to participate remotely in any such hearings; and

It is further resolved that the 2021 Legislative Reapportionment Commission shall be authorized to conduct remote meetings for the purpose of discussion and to make decisions on administrative matters, such as matters relating to scheduling, personnel and budget and that Members of the Commission or their authorized Deputies shall be authorized to participate remotely in any such Commission meetings; and

It is further resolved that, for purposes of this resolution, the terms "remote" and "remote participation" shall be defined in ways that are consistent with the Rules of the Pennsylvania Senate as of the date of the adoption of this resolution.

- Motion by Commissioner Benninghoff to adopt the resolution
- Second by Commissioner Costa
- All Commissioners and the Deputy Commissioner voted Aye

Chair Nordenberg then opened the meeting for Commission discussion. Commissioner McClinton introduced the subject of prison gerrymandering. She presented a draft resolution and cited that nearly 40,000 constituents across the Commonwealth are not counted by the census at their home addresses. She urged the Commission to address this matter during the current redistricting process. Commissioner Costa supported Commissioner McClinton's statements and stated that prison gerrymandering is an item that is worthy of consideration by the Commission. Chair Nordenberg noted that matters like prison gerrymandering should be considered in a fair and deliberative manner, and everyone should have the opportunity to review all materials, both pro and con. He also suggested that this would be best if done before the Commission receives the census data.

Chair Nordenberg urged the Commissioners to continue to reach out to him with matters that are specifically important to each of them.

With there being no further business, Chair Nordenberg adjourned the meeting at 4:48 p.m.

MEETING MINUTES
2021 PA LEGISLATIVE REAPPORTIONMENT COMMISSION

Date and time of meeting: June 25, 2021 9:00 – 9:20 a.m.

Location: Senate Hearing Room #1, North Office Building

AGENDA

1. Call to Order
2. Administrative Resolutions
 - A. Administrative Assistant
 - B. Director of Administration
 - C. Executive Director
 - D. Open-Records Officer
3. New Business/Discussion
4. Adjournment

Chair Mark Nordenberg called the meeting to order at 9:00 a.m.

He then recognized the other members of the Commission in attendance in person and via Zoom:

- House Majority Leader Kerry Benninghoff – via Zoom
- Senate Democratic Leader Jay Costa – in person
- Representative Matthew Bradford serving as Deputy Commissioner for House Democratic Leader Joanna McClinton – via Zoom
- Senate Majority Leader Kim Ward – in person

Chair Nordenberg explained that this brief administrative meeting is needed to take some important steps in building the Commission staff that will support the upcoming work of the Commission. He then began the introduction of four resolutions:

Resolution #2A – Administrative Assistant

It is hereby resolved that Cheri M. Mizdail be appointed Administrative Assistant of the Commission and that she be compensated in the bi-weekly amount of \$2,300. She will continue to participate in the Commonwealth health and retirement benefits program.

- Motion by Commissioner Ward to adopt the resolution
- Second by Commissioner Benninghoff
- All Commissioners and the Deputy Commissioner voted Aye

Resolution #2B – Director of Administration

It is hereby resolved that Ann-Marie Sweeney, who was earlier appointed Stenographer of the Commission, also be appointed Director of Administration, and that she be compensated in the bi-weekly amount of \$4,780. She will continue to participate in the Commonwealth health and retirement benefits program.

- Motion by Commissioner Costa to adopt the resolution
- Second by Commissioner Ward
- All Commissioners and the Deputy Commissioner voted Aye

Resolution #2C – Salary for Executive Director

It is hereby resolved that G. Reynolds Clark, who was earlier appointed Executive Director of the Commission, be compensated in the bi-weekly amount of \$6,615. He will not participate in the Commonwealth health and retirement benefits program.

- Motion by Commissioner Ward to adopt the resolution
- Second by Commissioner Benninghoff
- All Commissioners and the Deputy Commissioner voted Aye

Resolution #2D – Appointment of Open Records Officer

It is hereby resolved that G. Reynolds Clark, Executive Director of the Commission, shall also serve as Open Records Officer for the Commission.

- Motion by Commissioner Costa to adopt the resolution
- Second by Commissioner Benninghoff
- All Commissioners and the Deputy Commissioner voted Aye

During New Business/Discussion, Chair Nordenberg expressed sincere appreciation to House Parliamentarian Clancy Myer and Commissioner McClinton for their assistance in securing the office space that will be the location of the Commission office. He also expressed his gratitude to Brent McClintock, Executive Director of the Pennsylvania Legislative Data Center, for his professional support in getting the electronic equipment procured and set up in the office as well as his help on getting the Commission's website fully functional. Chair Nordenberg said that the website is being designed to make the process as convenient as possible to enable citizens to submit suggestions to the Commission.

Chair Nordenberg also stated that he is very pleased with staff that has been assembled to date. He noted that he will be adding someone with mapping and map assessment expertise and hopes to bring a recommendation to the Commission in July for filling that position.

Chair Nordenberg also announced that the Commission intends to conduct a series of public hearings in July and early August. He noted that technology will allow for remote participation in these hearings and that timely notices will be posted before each hearing.

With no other business or comments, Chair Nordenberg adjourned the meeting at 9:17 a.m.

MEETING MINUTES
2021 PA LEGISLATIVE REAPPORTIONMENT COMMISSION

Date and time of meeting: July 13, 2021 2:00 – 2:20 p.m.

Location: Senate Hearing Room #1, North Office Building

AGENDA

1. Call to Order
2. Administrative Resolution Regarding Appointment of Mapping Consultant
3. Adjournment

Chair Mark Nordenberg called the meeting to order at 2:00 p.m.

He then recognized the other members of the Commission in attendance:

- House Majority Leader Kerry Benninghoff
- Senate Democratic Leader Jay Costa
- House Democratic Leader Joanna McClinton participated via cell phone for portions of the meeting

Chair Nordenberg noted that there was only one matter to be addressed at this meeting and that is the appointment of a mapping consultant. He stated that he expects the Commission to receive an unprecedented number of citizen-drawn maps to be submitted and these will all need to be reviewed. A specialist on the Commission staff will be beneficial in expediting this process. He then discussed the process he used to identify someone with the personal credentials and expertise to fill the mapping position. He also stressed that, if possible, he preferred to have someone from Pennsylvania. He then presented the credentials of Dr. Jonathan R. Cervas, currently filling a postdoctoral fellowship at Carnegie Mellon University.

Both Commissioners Costa and Benninghoff thanked the Chair for presenting the detailed information on the need for the mapping consultant and the credentials of Dr. Cervas.

Chair Nordenberg then called for a motion on the resolution.

Resolution #3A – Appointment of Mapping Consultant

It is hereby resolved that Jonathan R. Cervas be appointed Mapping Consultant for the Commission.

- Motion by Commissioner Costa to adopt the resolution
- Second by Commissioner Benninghoff
- All three Commissioners present voted Aye
- Commissioner McClinton no longer seemed to be connected

With no other business, the meeting was adjourned at 2:20 p.m.

A LEGISLATIVE REAPPORTIONMENT COMMISSION RESOLUTION

1 Providing for residence of incarcerated individuals for the
2 purpose of creating the reapportionment plan for the General
3 Assembly.

4 WHEREAS, The Legislative Reapportionment Commission and the
5 Legislative Data Processing Center obtained from the Department
6 of Corrections information, including, for each individual
7 incarcerated in a State correctional facility at the time of the
8 Federal Decennial Census of 2020:

9 (1) a unique identifier, not including the name, of the
10 individual;

11 (2) the last known address of the individual prior to
12 being sentenced to incarceration;

13 (3) the census block of the facility where the
14 individual is incarcerated; and

15 (4) the race, ethnicity and age of the individual, if
16 known;

17 and

18 WHEREAS, The Pennsylvania State Data Center, using geocoding

1 tools, successfully geocoded 83.17% of in-state inmates to their
2 last known address; and

3 WHEREAS, Article II, Section 17 of the Constitution of
4 Pennsylvania grants the commission the exclusive authority to
5 reapportion the Commonwealth; and

6 WHEREAS, The practice of counting inmates as residents of
7 their prisons rather than from the districts from which they
8 came artificially inflates the population count of districts
9 where prisons are located and artificially reduces the
10 population count of districts from which the inmates came,
11 likely continue to have ties to and likely will return to post
12 incarceration; therefore be it

13 RESOLVED, That the population total used after the Federal
14 Decennial Census of 2020 by the Legislative Reapportionment
15 Commission for the purpose of legislative reapportionment for
16 the General Assembly:

17 (1) not count an individual who:

18 (i) is incarcerated in a State correctional
19 facility, as determined by the census; and

20 (ii) was not a resident of this Commonwealth
21 immediately prior to being sentenced to incarceration;
22 and

23 (2) count an individual who is incarcerated in a State
24 correctional facility, as determined by the census, and who
25 was a resident of this Commonwealth immediately prior to
26 being sentenced to incarceration:

27 (i) at the address, as reported by the Department of
28 Corrections, where the individual was last domiciled in
29 this Commonwealth immediately prior to being sentenced to
30 incarceration;

(ii) if the individual was homeless immediately prior to being sentenced to incarceration, at the location in this Commonwealth, as reported by the department, where the individual regularly stayed or regularly received services immediately prior to being sentenced to incarceration;

(iii) if there is no address under subparagraph (i) and no location under subparagraph (ii), at the facility where the individual is incarcerated; or

(iv) if the individual is subject to a sentence of life imprisonment, at the facility where the individual is incarcerated;

and be it further

RESOLVED, That, in order to ensure that each individual incarcerated in a State correctional facility who was a resident of this Commonwealth immediately prior to being sentenced to incarceration is counted under the first Resolved Clause, in reapportioning the General Assembly, the information under the first and second Whereas Clauses is used to adjust the population data for this Commonwealth received under 13 U.S.C. § 141(c) (relating to population and other census information); and be it further

RESOLVED, That the Pennsylvania State Data Center adjust the population data under the second Resolved Clause and maintain a detailed log of the process used and the adjustments made to the population data, subject to the direction of any subsequent memorandum approved by a majority vote of the commission.

SENATOR JAY COSTA REMARKS

PRISON GERRYMANDERING

August 24, 2021

- Good morning. I would like begin by stating my support for this resolution introduced by Leader McClinton.
- The Legislative Reapportionment Commission is a constitutionally created body that is not limited to rules governing the use of census data for the reapportionment of residents of the commonwealth for redistricting purposes.
- The Legislative Reapportionment Commission is a constitutionally created body that is not encumbered by the enactments or *lack of* enactments of the General Assembly. Its existence, authority and duties are *wholly* prescribed in Article II, Section 17 of the Pennsylvania Constitution with the review thereof by the Pennsylvania Supreme Court *alone*.
- Its existence, authority and duties are *wholly* prescribed in Article II, Section 17 of the Pennsylvania Constitution with the review thereof by the Pennsylvania Supreme Court *alone*. As Leader McClinton clearly asserts, that constitutional section provides that the use of the Decennial Census information marks the commencement of the work of the Commission. It does not limit its work or what it may consider in the crafting of districts that are “compact, contiguous and nearly equal in population as practicable.” Pa. Const. Art. II, § 16.
- The Pennsylvania Elections Code, as a clear expression of the policy of the General Assembly, stands for the proposition that incarcerated individuals do not lose their residency status or their ability to vote in the election districts of their residence not where they are incarcerated.
- Incarcerated individuals continue to be entitled to voting privileges under the Election Code, which is the only state statute cited in this debate concerning the residency of inmates of the Department of Corrections.

§ 1302. Residence of electors.

(a) General rule.--

(1) For the purpose of registration and voting, no individual shall be deemed to have gained a residence by reason of presence or lost a residence by reason of absence in any of the following circumstances:

(iii) Being in an institution at public expense. This subparagraph does not apply to a veteran who resides in a home for disabled and indigent soldiers and sailors maintained by the Commonwealth. Such a veteran may elect to utilize that residence for registration and voting or elect to vote as an absentee elector by the use of an absentee ballot. 25

Pa.C.S. § 1302.

- The LRC heard a study from Villanova professors on the impact of prisoner reallocation on State House Districts. Here is some data on State Senate Districts.
- When counted in the districts where they are housed rather than where they reside, incarcerated individuals lack meaningful representation and the representation of the areas where the individuals are housed artificially gain over-representation defeating the concept of one person, one vote.
- There are 24 PA State Correctional Facilities, which are located in 15 State Senate Districts.
 - 23 of the facilities are in 14 State Senate Districts represented by Republicans
 - 1 facility is in a State Senate District represented by a Democrat
 - 11 of the 14 Republican Senate Districts lost significant population in the past decade.
- Prison Population: 44,201 addresses were provided by the PA DOC for incarcerated individuals. Of those:
 - 33,580 were found to have home addresses in PA (76% of the list)
 - 36% of those with home addresses would be reallocated to the state's two largest cities, Philadelphia and Pittsburgh.
 - Of those who have home addresses: 10,417 (or 31%) would be reallocated to Philadelphia
 - And another 1,660 (5%) would be reallocated to Pittsburgh

- 11 States reallocate incarcerated individuals from prisons to home addresses, including 4 of the 5 Mid-Atlantic states. These 11 states encompass the population of 35% of the US, almost 118 million people. ***Pennsylvania is the only Mid-Atlantic state that does not reallocate incarcerated individuals to their home address.***
- The United States Supreme Court upheld the Maryland statute that ended prison gerrymandering in its decision in *Fletcher v. Lamone*, 133 S.Ct. 29, (2012).
- Based on the information provided by the Department of Corrections regarding inmates home addresses, PA State Data Center was able to match 78.25% of inmates to correct address, which corresponds with the experience in neighboring states that have also provided for inmate reallocation: Maryland 77.1%, New York 75.77%.
- An egregious example of how State Prison population help bolster the population in one county is Forest County.
 - The total population of Forest County is 6,973.
 - 2,653 or 38% of the ***population*** in this county are incarcerated in SCI Forest.
- The Census Bureau itself has provided guidance to the states for the reallocation of incarcerated populations to their home districts.
- If the PASDC is unable to complete this task in a timely manner, there is another option offered by the Census Bureau. They have created a portal for states to assist in the reassignment of population in Group Quarters. States have the ability to upload files up to 50,000 addresses to be geocoded by the Census and securely returned to the states with the needed information attached to each record.
- Thank you.

PENNSYLVANIA SCI LOCATIONS - BY STATE SENATE DISTRICT

The map displays the following Sci locations by district:

- District 14 (Yellow):** Dallas (DAL)
- District 22 (Blue):** Waymart (WAM)
- District 29 (Blue):** Mahanoy (MAH)
- District 30 (Blue):** Smithfield (SMI)
- District 31 (Blue):** Camp Hill (CAM)
- District 32 (Blue):** Somerset (SMR)
- District 33 (Blue):** Adams
- District 34 (Blue):** Bennet Township (BEN), Rockview (ROD)
- District 35 (Blue):** Mountdale (MOU)
- District 36 (Blue):** Lancaster
- District 37 (Blue):** Allegheny
- District 38 (Blue):** Allegheny
- District 39 (Blue):** Westmoreland
- District 40 (Blue):** Monroe
- District 41 (Blue):** Pine Grove (PNG)
- District 42 (Blue):** Allegheny
- District 43 (Blue):** Allegheny
- District 44 (Blue):** Chester
- District 45 (Blue):** Allegheny
- District 46 (Blue):** Fayette (FYF), Greene (GRN)
- District 47 (Blue):** Lawrence
- District 48 (Blue):** Lebanon
- District 49 (Blue):** Erie
- District 50 (Blue):** Cambridge Springs (CBS)
- District 11 (Blue):** Berks
- District 12 (Blue):** Phoenix (PHX)
- District 13 (Blue):** Lancaster
- District 16 (Blue):** Lehigh
- District 18 (Blue):** Bucks
- District 19 (Blue):** Chester
- District 24 (Blue):** Berks
- District 26 (Blue):** Chester
- District 29 (Blue):** Schuylkill
- District 30 (Blue):** Huntingdon
- District 31 (Blue):** Cumberland
- District 32 (Blue):** Somerset
- District 33 (Blue):** Adams
- District 34 (Blue):** Centre
- District 35 (Blue):** Clearfield
- District 36 (Blue):** Lancaster
- District 37 (Blue):** Allegheny
- District 38 (Blue):** Allegheny
- District 39 (Blue):** Westmoreland
- District 40 (Blue):** Monroe
- District 41 (Blue):** Armstrong
- District 42 (Blue):** Allegheny
- District 43 (Blue):** Allegheny
- District 44 (Blue):** Chester
- District 45 (Blue):** Allegheny
- District 46 (Blue):** Washington
- District 47 (Blue):** Lawrence
- District 48 (Blue):** Lebanon
- District 49 (Blue):** Erie
- District 50 (Blue):** Crawford
- District 1 (Pink):** Erie
- District 2 (Pink):** Warren
- District 3 (Pink):** McKean
- District 4 (Pink):** Potter
- District 5 (Pink):** Toga
- District 6 (Pink):** Bradford
- District 7 (Pink):** Susquehanna
- District 8 (Pink):** Wayne
- District 9 (Pink):** Pike
- District 10 (Blue):** Bucks
- District 15 (Blue):** Dauphin
- District 17 (Blue):** Berks
- District 20 (Blue):** Lackawanna
- District 21 (Blue):** Forest
- District 23 (Blue):** Lycoming
- District 25 (Blue):** Cameron
- District 27 (Blue):** Snyder
- District 28 (Blue):** York
- District 3 (Pink):** McKean
- District 4 (Pink):** Potter
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- District 7 (Pink):** Susquehanna
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- District 9 (Pink):** Pike
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- District 13 (Blue):** Lancaster
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- District 21 (Blue):** Forest
- District 22 (Blue):** Lackawanna
- District 23 (Blue):** Lycoming
- District 24 (Blue):** Berks
- District 2**



A LEGISLATIVE REAPPORTIONMENT COMMISSION RESOLUTION

1 Providing for the submission of two final data sets to the
2 Legislative Reapportionment Commission.

3 RESOLVED, That the State Data Center submit to the
4 Legislative Reapportionment Commission two final data sets, one
5 with the population adjusted on the basis of residence of
6 individuals incarcerated in State correctional facilities and
7 one without the population data adjusted on the basis of
8 residence of individuals incarcerated in State correctional
9 facilities.

A LEGISLATIVE REAPPORTIONMENT COMMISSION RESOLUTION

1 Providing for residence of incarcerated individuals for the
2 purpose of creating the reapportionment plan for the General
3 Assembly.

4 RESOLVED, That the population total used after the Federal
5 Decennial Census of 2020 by the Legislative Reapportionment
6 Commission for the purpose of legislative reapportionment for
7 the General Assembly count an individual who is incarcerated in
8 a State correctional facility, as determined by the census, and
9 who was a resident of this Commonwealth immediately prior to
10 being sentenced to incarceration:

11 (1) except as provided under paragraph (2):

12 (i) at the address, as reported by the Department of
13 Corrections, where the individual was last domiciled in
14 this Commonwealth immediately prior to being sentenced to
15 incarceration;

16 (ii) if the individual was homeless immediately
17 prior to being sentenced to incarceration, at the
18 location in this Commonwealth, as reported by the

1 department, where the individual regularly stayed or
2 regularly received services immediately prior to being
3 sentenced to incarceration; or

4 (iii) if there is no address under subparagraph (i)
5 and no location under subparagraph (ii), at the facility
6 where the individual is incarcerated.

7 (2) if the individual is subject to a sentence of 10
8 years or longer, at the facility where the individual is
9 incarcerated.