PRISON
POLICY INITIATIVE

For more information about prison gerrymandering, see our website and newsletter at https://www.prisonersofthecensus.org

PRISON GERRYMANDERING IN WASECA, MN

The Supreme Court requires local governments to update their legislative districts once per decade so that each district contains the same population, giving each resident equal representation. For most local governments this redistricting process relies on U.S. Census data and is straight forward. For communities that host large prisons, however, the process can be more complex because the U.S. Census Bureau counts incarcerated people where they are confined, even though the Minnesota Constitution declares that a prison is not a residence.

Problem

The Census Bureau counts people incarcerated in a correctional facility as residents of the prison, so when Waseca uses Census data to draw its legislative districts, the City Council district with the prison in it will have fewer actual Waseca residents than the other districts. This means that the county is — albeit unintentionally — giving people who live near the prison more representation on the Waseca City Council. This violates principles of equal representation.

- After the 2010 Census, the Waseca Board of Commissioners counted 2,058 people incarcerated at MCF Faribault as if they were residents of District 3. People incarcerated at MCF Faribault account for 16% of the population of District 3. That effectively gives each group of 86 actual residents in District 3 as much political clout as 100 people in the other districts.

> **State Constitution says prison is not a residence**
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> The Minnesota Constitution states that "no person loses residence ... while confined in any public prison." (Article VII, § 2.)
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> The Census Bureau, however, counts incarcerated people as if they were residents of the prisons in which they are confined.
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> When redistricting both state and local districts, Minnesota and its counties should use data that are consistent with the state constitution and stop giving extra representation to state, county and city districts that contain prisons.

Solutions

In most states, the solution would be simple: use redistricting data that complies with the state's definition of residence. In our research, we've discovered more than 200 county and municipal governments that removed the prison population prior to redistricting. Most of these local governments do so by choice, and a few states even require or encourage this outcome.

Unfortunately, unlike most states, Minnesota statute defines population in a way that has led some to conclude that the Census Bureau's unadjusted prison counts must be used for redistricting — without any regard to the inequality that flows from counting incarcerated people in the wrong place. (Minnesota Statute § 645.44(8) says that "unless otherwise expressly provided" "[w]hen used in reference to population, 'population' and 'inhabitants' mean that shown by the last preceding federal decennial census.") There are at least three possible solutions to this problem:

1. Waseca can take note of the fact that the Census Bureau will be, for the first time, publishing counts of incarcerated people in a special table in the PL94-171 redistricting data file. The Census is making this change specifically to help, in its own words, "those in the redistricting community who must consider whether to include or exclude certain populations when redrawing boundaries." Your city could conclude that using the Census data in this way is entirely consistent with the statutory requirement to use data "shown by the last preceding federal decennial census."

2. Waseca can conclude that the federal constitutional requirement of equal representation, and Minnesota's constitutional definition of residence, are more important than a simple statutory definition.

3. Waseca should ask the Minnesota state legislature to amend the statutes that control county redistricting (§ 375.025) and municipal redistricting (§ 205.84), such that they explicitly define the population to be used for redistricting to not include people in a location solely for the purpose of incarceration as required by Article VII, § 2 of the State Constitution.