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Testimony of

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Before the
Rhode Island House Committee on Judiciary
on
H 5155

SUPPORT

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Thank you, Chairperson Keable and members of the Committee for providing the opportunity to submit testimony in support of House Bill 5155.

I am an attorney and Executive Director of the Massachusetts-based Prison Policy Initiative. For more than a decade, we have been leading the national effort to urge the Census Bureau to count incarcerated people as residents of their legal home addresses. At the same time, we work closely with state and local governments to develop interim solutions to the harmful distortion of democracy caused by the Census Bureau's prison count.

Before the Committee today is H 5155, a bill that would correct, within the state of Rhode Island, the harmful effects of a long-standing flaw in the decennial census: tabulating incarcerated people as residents of the wrong location. The Census Bureau's practice of crediting incarcerated people to the census block that contains the prison, rather than the census block that contains their home address, results in prison gerrymandering: a significant enhancement of the weight of a vote cast in districts with prisons, and consequently a dilution of the votes cast by all other residents in all other districts in the state.

By passing H 5155, Rhode Island would ensure that the vast majority of Rhode Islanders do not have their votes diluted relative to those who live near the state prison complex in Cranston. H 5155 would allow Rhode Island, a state that exhibits one of the most extreme examples of vote dilution caused by prison gerrymandering, to finally join the national trend towards solving this problem.

The problem

The concentration of all Rhode Island's state prisons into just one location in the state makes the problem of prison gerrymandering in the state's legislative districts more significant than in almost any other state. In most states, prison gerrymandering affords a small number of districts with prisons between 1% and 5% more political influence than the residential populations of those districts actually warrant. Even in those states with a more modest impact, prison gerrymandering is considered a serious ill that is to be avoided.

By contrast, prison gerrymandering is a far larger problem in Rhode Island, where almost 15% of House District 20 is made up of incarcerated people from other parts of this state. This gives every group of 85 residents in this district the same influence as 100 residents in any other district.

Experience during the most recent 2011-2012 round of redistricting shows that the Rhode Island legislature should not rely on adoption of ad-hoc approaches to remedy the systemic problem of the Census Bureau's prison count. The state needs a better approach put into place now before the next redistricting cycle begins.

The solution

By passing H 5155, Rhode Island can follow New York, Maryland, Delaware and California and end prison gerrymandering by tabulating incarcerated people at home for redistricting purposes. A total of eight states and more than 200 counties and municipalities (all listed in the Appendix) have taken steps to eliminate or reduce the effects of prison gerrymandering in their jurisdictions. Additionally, Massachusetts passed are solution urging the Census Bureau to create a national solution.

By passing H 5155 in this legislative session, the legislature would allow ample planning time to ensure smooth and effective implementation in the next redistricting cycle. Maryland and New York both passed their respective laws after census day in 2010 with just enough time to implement the laws before the most recent round of redistricting.[1] These two states' experiences working under tight deadline pressure to successfully eliminate prison gerrymandering provide

[1] The laws of both states ending prison gerrymandering were upheld in the courts. New York's law was upheld in state court (*Little v New York State Task Force on Demographic Research and Reapportionment* No. 2310-2011 slip op. (NY Sup Ct. Dec. 1, 2011)) and Maryland's law was affirmed by the U.S. Supreme Court *Fletcher v. Lamone*, __ U.S. __, 2012 WL 1030482 (June 25, 2012) affirming No. RWT-11cv3220 slip op. (D. Md. Dec. 23, 2011). The decisions and documents from both cases are archived at http://www.prisonersofthecensus.org/fletcher/ and http://www.prisonersofthecensus.org/little/ .

powerful evidence that the adjustments proposed by H 5155 can be easily accomplished in time for the 2021 redistricting.[2]

H 5155 is sound policy

This bill is sound policy that will remedy a significant distortion of Rhode Island democracy. Here I will address concerns that have been raised about this bill, as well as some of the bill's more subtle benefits.

Funding is not affected. Both conceptually and explicitly in the precise language of the bill, H 5155 would not affect funding. This bill is state legislation that would require the creation of a new dataset for use in state and local redistricting. This dataset would not affect the distribution of federal or state funds simply because because there is no federal or state funding formula that is distributed on the basis of redistricting data. Moreover, section 17-30-8 of H 5155 makes this prohibition explicit: "The data prepared by the secretary of state as required by section 17-30-5 shall not be used in the distribution of any state or federal aid."

Both state law and common sense dictate that incarcerated people are residents of their homes, not the ACI. H 5155 would make the data used for redistricting in Rhode Island consistent with the state's statutory definition of residence:

> "A person's residence for voting purposes is his or her fixed and established domicile... A person can have only one domicile, and the domicile shall not be considered lost solely by reason of absence for any of the following reasons: … Confinement in a correctional facility...." (Rhode Island General Laws § 17-1-3.1.)

Consistent with the state's statutory definition, Cranston officials have not considered people incarcerated at the ACI to be residents of Cranston. For example, in 2010 when a second-grader whose father was incarcerated at the ACI asked to remain enrolled in the Cranston schools after her mother moved back to Providence, Mayor Allan Fung declared that the little girl could not take advantage of the Rhode Island law that allows parents who live in two different school districts to decide which school district to enroll their child. As Mayor Fung correctly told WPRI, the student's incarcerated father was not actually a resident of Cranston:

> "This individual is not a taxpayer to the city of Cranston, he's in a situation where he's incarcerated." [3]

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[2] See Erika Wood, *Implementing Reform: How Maryland & New York Ended Prison Gerrymandering*, Dēmos, August 2014 available at http://www.demos.org/publication/implementing-reform-how-maryland-new-york-ended-prison-gerrymandering

[3] See Sara Mayeux's summary of the dispute on the Prison Gerrymandering blog at http://www.prisonersofthecensus.org/news/2010/03/31/rimayo/ Many of the news articles that Ms. Mayeux cites are no longer online, but the Prison Policy Initiative would be happy to share our archived copies on request.

While the ACI may look permanent, the individuals who are inappropriately tabulated there are quite transient. I've occasionally heard the argument that it makes sense to count incarcerated people as residents of the ACI because they will be incarcerated there for a long time. This is factually incorrect for both of the two major groups of people who are confined at the facility:

- Pretrial detainees (those attempting to make bail or held until trial), who on any given day comprise a quarter of the total number of people incarcerated at the ACI, have a median length of stay of only three days.[4]

- People who have been convicted and are serving sentences. The average sentence imposed on a person sent to the ACI is less than two years and, as the DOC notes, "[t]he actual amount of time offenders stay in prison is almost always shorter than the full sentence imposed, due to factors such as statutory good time (i.e., credit earned for good or industrious behavior) and earned time for program participation and completion (time deducted from sentence)."[5]

From the outside, the ACI may look permanent, but the individuals confined there are in fact there only temporarily.

Cheating at the redistricting table is not an appropriate way to address any perceived shortcomings in the state PILOT formula. In my meetings two years ago with stakeholders, I heard a bizarre proposition that the extra political clout gleaned from prison gerrymandering is justified by alleged unreimbursed costs that Cranston bears because it contains the prison complex.

The opponents' argument is essentially that Cranston is secretly subsidizing the prison complex because the state is not properly reimbursing the city for municipal services like ambulance usage. This claim is contradictory to my experience on economic development and related issues in other states, and the city did not respond to my attempts to reach out to document these costs. If it is in fact true that, for example, city ambulances are providing services to the prison that are not being properly reimbursed, the cost of those services should be quantified and immediately brought to the attention of both the Department of Corrections the legislature for consideration during the next revisions to the PILOT formula. However, regardless of whether or not Cranston is due additional

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[4] See Rhode Island Department of Corrections Planning & Research Unit, Fiscal Year 2013 Annual Population Report, p. 15, at http://www.doc.ri.gov/administration/planning/docs/FY13%20Annual%20Report.pdf. The average pre-trial length is somewhat higher, 24 days, because of the longer time spent behind bars by the very small number of people who do not receive bail. Finally, it is worth noting that the total population of the ACI is actually declining. As the DOC notes on page 9: "since FY08 the population has seen a steady decline and fell 18% in the past five years."

[5] Ibid, page 17.

compensation, the appropriate response to a financial loss is compensation in kind, not claiming extra political clout during redistricting.

Many people confined at the ACI are allowed to vote, but they are barred from voting in Districts 15 or 20. Approximately 1,000 people confined at the ACI are in fact allowed to vote[6] because they are either awaiting trial or because their sentence is for a misdemeanor. (Only felony offenses result in disenfranchisement.) However, Rhode Island General Laws § 17-1-3.1 (the residence law statute discussed above) prohibits these 1,000 potential voters from claiming the ACI as a residence. If they wish to vote, they must vote via absentee ballot as residents of their home districts.

Prison gerrymandering undercounts the state house districts that are home to 97.33% of the state's population. While incarcerated people disproportionately come from Providence, people are sent to the ACI from home communities in every part of the state [7], all of which consequently suffer from underrepresentation. Each one of the 73 house districts that do not contain the ACI is shortchanged in the redistricting process.

98.66% of Rhode Island residents (anyone who does not live in House District 20) have their vote diluted by prison gerrymandering. The ACI is split between the 15th and the 20th House Districts, with the larger portion in the 20th. So while both districts are net beneficiaries from prison gerrymandering, the extreme vote enhancement in the 20th District dilutes the votes of all votes cast elsewhere, including in the 15th District that is padded by a comparatively smaller number of incarcerated people. As a result, 98.66% of the state would benefit from ending prison gerrymandering in state house redistricting.

The bill is beneficial to Cranston.
While the distortion that prison gerrymandering causes in state districts is dramatic, the effect is even more extreme on the municipal level of the Cranston City Council. While the incarcerated people tabulated at the ACI are distributed between two state house districts and two state senate districts, on the municipal level every single person that the Census Bureau counted at the prison complex is currently used to pad just one city ward. This gives every group of three residents in Cranston's Ward 6 the same influence over city affairs as any four residents of any of the other five wards.

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[6] See figures for pre-trial and misdemeanor populations in Rhode Island Department of Corrections Planning and Research Unit, "Fiscal Year 2013 Annual Population Report," page 15-16. Available at: http://www.doc.ri.gov/administration/planning/docs/FY13%20Annual%20Report.pdf

[7] See Rhode Island Department of Corrections Planning and Research Unit, "Distribution of FY13 Released Offenders", available at http://www.doc.ri.gov/administration/planning/docs/Distribution%20of%20FY13%20Released%20Offenders.pdf or Rhode Island Department of Corrections Planning and Research Unit, "Reentry Analysis 2010", p. 1, available at http://www.doc.ri.gov/administration/planning/docs/Reentry%20Report.pdf

In sum, H 5155 would strengthen the democratic voice of 99.989% of Rhode Island residents in one or more levels of government:

- While the ACI is split between House districts 15 and 20, the portion in District 20 is far larger. Every resident of the state who does not live in District 20 (including the residents of District 15), therefore, has his or her vote diluted by prison gerrymandering.

- The ACI is split between state Senate districts 27 and 31, but the portion in district 27 is far larger. Every resident of the state who does not live in District 27 (including the residents of District 31), therefore, has his or her vote diluted by prison gerrymandering.

- The ACI exists solely within Cranston City Ward 6, diluting the votes of every Cranston resident who lives in one of the other five wards.

There are only 112 Rhode Island residents who live in the specific geographic region of the state that falls within House District 20, Senate District 27, and Cranston City Ward 6, and thus experience vote inflation on all three electoral levels.[8] Ending the vote enhancement to the area surrounding the ACI would, in at least one way, strengthen the electoral clout of every other resident in the state.

Conclusion

I urge you to pass H 5155 in order to enact a permanent state-based solution to the problem of prison gerrymandering in Rhode Island. Please do not hesitate to contact me if I can answer any questions or provide you with additional resources on the successful implementation of the comparable laws in Maryland and New York. I thank you for the opportunity to present this testimony.

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[8] All but 112 people in Cranston (99.855% of Cranston residents) would benefit in at least one level of government from this legislation ending prison gerrymandering in the state senate, state house and the city council. This bill is good for the vast majority of residents of the state (99.989%) as a whole *and* the vast majority of the residents of Cranston (99.855%).

Appendix:
States and local governments are taking action to end prison gerrymandering
Last updated: April 29, 2014

California – Passed legislation to count incarcerated people at their homes of record for state legislative districting. (2011 & amended in 2012) (Cal. Elec. Code § 21003)

Colorado — Passed legislation to prohibit counties from engaging in prison gerrymandering. (2002) (Colo. Rev. Stat. §§ 30-10-306 and 30-10-306.7)

Delaware — Passed legislation to count incarcerated people at their homes of record for state legislative districting. (2010 & amended in 2011) (Del. Code Ann. Tit. 29, § 804A)

Maryland — Passed legislation to count incarcerated people at their homes of record for congressional, state legislative, county and municipal redistricting. (2010) (Md. Code Ann., Elec. Law § 8-701, Md. Code Ann., State Gov't § 2-2A-01, and Md. Code Ann., Art. 24 Political Subdivisions - Miscellaneous Provisions § 1-111)

Michigan — Passed legislation to prohibit counties and cities from engaging in prison gerrymandering. (1966) (Mich. Comp. Laws §§ 46.404(g)) and 117.27a(5))

New Jersey — Passed legislation to prohibit some school boards from engaging in prison gerrymandering. (1967) (N.J. Stat. Ann. § 18A:13-8)

New York — Passed legislation to count incarcerated people at their homes of record for state legislative, county and municipal redistricting. (2010) (N.Y. Correct. Law §71(8), N.Y. Legis. Law § 83-m(13), and N.Y. Mun. Home Rule Law § 10(1)(ii)(a)(13))

Virginia — Passed legislation amending an unusual statute that required counties, cities and towns to engage in prison gerrymandering. (2001, amended in 2012 & 2013) (Va. Code Ann, § 24.2-304.1)

In addition, more than 200 counties and municipalities across the country, without an explicit requirement from their state, are known to refuse to engage in prison gerrymandering, including:

Alabama counties: Escambia
Alabama cities: Brent, Town of Clayton, Columbiana, Wetumpka
Arizona cities: Douglas
Arkansas counties: Hot Spring, Lee, Lincoln, St. Francis
Arkansas cities: Forrest City, Malvern
California counties: Amador, Del Norte, Imperial, Kern, Kings, Lassen, Madera, Monterey, San Luis Obispo, Tuolumne.

Colorado cities: Brighton, Cañon, Centennial, Golden, Sterling
Connecticut towns: Cheshire, Enfield
Florida counties: Bradford, Franklin, Gulf, Lafayette, Madison, Okeechobee, Washington
Georgia counties: Butts, Calhoun, Dooly, Johnson, Macon, Stewart, Tattnall, Telfair, Washington, Wilcox
Georgia cities: Claxton, Glennville, Gray, McRae, Ocilla
Illinois counties: Bond, Christian, Crawford, Fayette, Fulton, Jefferson, Lawrence, Lee, Livingston, Montgomery, Rock Island, Will
Illinois cities: Canton, Chester, Crest Hill, Danville, East Moline, Galesburg, Jacksonville, Pontiac, Robinson, St. Charles
Indiana counties: Vigo
Indiana cities: Crown Point, Terre Haute
Kentucky counties: Casey, Elliott, Lee, Marion, McCreary, Morgan, Oldham
Kansas counties: Leavenworth
Kansas cities: Lansing
Louisiana parishes: Avoyelles, Caldwell, Clairborne, Concordia, East Carroll, East Feliciana, Evangeline, Grant, Iberville, La Salle, Richland, West Carroll, West Feliciana, Winn
Louisiana cities: Town of Amite City, Oakdale
Maine school districts: MSAD 40 (Knox County)
Maryland counties: Somerset
Maryland cities: Baltimore
Michigan counties: Branch, Gogebic, Saginaw
Mississippi counties: Adams, Greene, Sunflower, Tallahatchie
Mississippi cities: Holly Springs, Lucedale
Missouri counties: Cole, Pike, Randolph
Missouri cities: Bonne Terre, Clayton, Farmington, Hillsboro, Jefferson, Licking, Tipton, Vandalia
Nebraska counties: Johnson
New Jersey cities: Camden
New York counties: Cayuga, Clinton, Dutchess, Essex, Franklin, Genesee, Greene, Oneida, Orleans, Seneca, St. Lawrence, Westchester
New York cities: Beacon, Brookhaven (town)
North Carolina counties: Caswell, Columbus
Ohio cities: Lima
Oklahoma counties: Alfalfa, Blaine, Greer, Holdenville, Hominy, Woods
Oklahoma cities: Lawton, Town of McLoud, Sayre, Watonga
South Carolina counties: Allendale, Edgefield, Lee, Marlboro, McCormick
South Dakota: Bon Homme
Texas counties: Anderson, Bastrop, Bee, Bowie, Brazoria, Brown, Burnet, Cherokee, Childress, Concho, Coryell, Dawson, DeWitt, Dickens, Duval, Fannin, Freestone, Frio, Garza, Hale, Haskell, Houston, Howard, Jack, Jones, Karnes, Kinney, La Salle, Live Oak, Madison, Medina, Mitchell, Pecos, Potter, Reeves, Rusk, Terry, Walker, Wichita, Willacy
Texas cities: Big Spring, Brownfield, Bryan, Henderson, Huntsville, Karnes City, Mineral Wells, Post, Victoria
Texas school districts: Fort Stockton Independent School District, Marlin Independent School District

Virginia counties: Brunswick, Greensville, Lee, Prince George, Richmond, Sussex
West Virginia cities: Moundsville
Wisconsin counties: Crawford
Wisconsin cities: Baraboo, New Lisbon, Portage, Prairie du Chien, Stanley