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**Comments of
Peter Wagner, Executive Director, Prison Policy Initiative
and Brenda Wright, Director, Democracy Program, Dēmos,**

**on the Proposed Redistricting Plans
of the Special Joint Committee on Redistricting of the
Massachusetts General Court**

October 25, 2011

Thank you for the opportunity to submit comments on the proposed House and Senate maps. We see this comment period as a significant improvement from the practice last decade, and are encouraged by the apparent increase in the number of districts where African-Americans and Latinos can effectively elect the candidates of their choice. We are, however, writing to register our disappointment with the fact that in its proposed maps, the Special Joint Committee on Legislative Redistricting did not seize the opportunity to minimize the distortions in representation that stem from the impact of prison populations. As you know, testimony submitted during the public hearing process by the Prison Policy Initiative, Dēmos, and several other groups and individuals urged the Committee to avoid giving extra representation to the districts that contains prisons, and explained how the Committee could reduce the distorting effect of prison population even without re-allocating incarcerated populations to their home addresses. The Committee's proposed plan does not take advantage of this opportunity, and the plan therefore will dilute the votes of all residents who live in districts without large prisons.

The *New York Times* has termed the problem "prison-based gerrymandering". Solutions are being adopted rapidly: Four states have already taken action.¹ Massachusetts should join them.

This testimony is submitted by Peter Wagner, Executive Director of the Prison Policy Initiative and Brenda Wright, Director of the Democracy Program at Dēmos. The Prison Policy Initiative has, for the last decade, been leading the national effort to urge the Census Bureau to count incarcerated people as residents of their legal home addresses. Led by attorney Peter Wagner, the organization works closely with state and local governments to develop interim solutions to the Census Bureau's prison miscount and the prison-based gerrymandering that

¹ Maryland and New York will count incarcerated people at home for this round of redistricting. The California and Delaware laws will take effect after the 2020 Census.

results. The Dēmos Democracy Program works to ensure high levels of voting and civic engagement, and supports reforms to achieve a more inclusive and representative democracy. Brenda Wright is an attorney with over 20 years of experience in redistricting, voting rights, and election reform, and was part of the legal team that represented community groups and organizations in the federal lawsuit challenging the Massachusetts House redistricting plan adopted after the 2000 Census.

In our testimony of May 14 and 31 and in other meetings, we urged the Committee to take a powerful interim step to reduce, if not eliminate, the pernicious effect of prison-based gerrymandering.² To be sure, the ideal solutions were not available to the Committee. Ideally, the Census Bureau would have counted incarcerated people at their home addresses, or the state constitution would allow legislation like that in Maryland and New York to reallocate incarcerated people to their home addresses for redistricting purposes. Nevertheless, we presented clear options available to the Committee for minimizing prison-based gerrymandering in Massachusetts. We proposed that the Committee use the permissible deviations of plus or minus 5% from ideal population size to partially offset the impact of the prison miscount. This would have avoided the twin problems seen after the 2000 Census, whereby districts with large prisons were drawn “too light” and at least one district that people in prison disproportionately call home was drawn “too heavy”. The actual resident populations of these districts exceeded allowable federal constitutional limits with districts at both ends of the continuum departing from the ideal district size by more than 5%.

We urged the Redistricting Committee to ensure that any district containing a prison would be “overpopulated” compared to ideal district size by the approximate size of the prison, within the allowable 5% deviation. If the “overpopulation” were equal to the size of the incarcerated population, then its voting strength would actually be more comparable to that of districts without prisons, and the one-person, one-vote standard would still be satisfied as long as the deviation from ideal size was not more than +5%.

It does not appear that the Committee’s plan used this available means for minimizing the distortions caused by treating the incarcerated population as residents of the prison community. Our analysis of the Committee’s proposed maps found 4 proposed districts in each chamber that meet the federal minimum population requirements only because they claim incarcerated people as constituents. Seven of those districts were already at the low end of the permissible deviation from ideal size – that is, they are underpopulated, even when the prison population is included. The eighth was slightly overpopulated compared to ideal size, but not enough to offset the two

² We will not repeat here the explanation of prison-based gerrymandering and how it distorts our democracy, but the previous testimony of Peter Wagner is available at http://www.prisonersofthecensus.org/testimony/ma_testimony-2011-May-31.pdf, and the previous testimony of Brenda Wright is available at http://www.demos.org/sites/default/files/publications/MA_Testimony_outline.pdf.

massive prisons (FMC Devens and MCI Shirley) which together result in a district with far fewer real constituents than most other districts in the state.

In the House, there are 4 districts that meet federal minimum population requirements only by claiming incarcerated people as residents. The 7th Middlesex, 37th Middlesex, 8th Plymouth, and 12th Worcester districts each have actual resident populations that are 5.6% to 7.4% smaller than the average district in the state. Votes cast in these districts that contain prisons will be worth more than those cast elsewhere. In each of these districts, the solution would have been to add additional population so that each is as close to +5% over ideal population size as possible. This “overpopulation” would thus offset to some extent the impact of including the incarcerated population in the district count. Instead, the deviations in these districts range from -5.6% to -7.4%.

We also note that the 4 smallest Senate districts each meet federal minimum population standards only by claiming incarcerated people as constituents. The facilities of MCI Norfolk, Baystate, Pondville and part of Cedar Junction were included in the Norfolk, Bristol & Middlesex district, adding 2,520 incarcerated people as padding to a district that was already 3.4% too small. The First Hampden & Hampshire and Berkshire, the First Hampden & Hampshire, Hampshire, and the Norfolk, Bristol & Middlesex districts were drawn right on the permissible line of having too little population to be districts, but both of these districts use prison populations as padding. Each of those districts has an actual population 5.2-5.4% smaller than the ideal. The Berkshire, Hampshire, Franklin & Hampden district has an actual resident population 5.04% smaller than the ideal.

Again, in each of these districts, the solution would have been to add additional population so that each is as close to +5% over ideal population size as possible. This “overpopulation” would thus offset to some extent the impact of including the incarcerated population in the district count. Instead, *the Committee’s plan actually compounds the problem of prison-based gerrymandering* by leaving these districts underpopulated compared to ideal size even with the prison population included.

Of course, districts whose population counts are on the +5% side of ideal size – districts that are “overpopulated” – must be offset by districts elsewhere in the state that will be somewhat “underpopulated” compared to ideal size. Most logically, this underpopulation would be appropriate in areas of the state from which the incarcerated population is drawn and which remain the home residence of the incarcerated person for other legal purposes. These are disproportionately the urban areas of the state.

We believe the Committee showed sincere interest during the hearing process in minimizing the impact of prison based gerrymandering on Massachusetts’ legislative redistricting plans, and we therefore hope very much that the Committee will take a second look at these districts containing large incarcerated populations. By adding additional population to these districts and

making sure they are “overpopulated” up to the +5% threshold, the Committee can responsibly address the distortion of prison-based gerrymandering even without taking the step of allocating incarcerated persons to their home addresses.

Recommendations

Of the 8 districts we identified as problematic, we are able to suggest changes for 4 that do not require splitting VTDs, and two that require splitting a VTD. None of our recommendations causing ripple effects on to other districts. Each of these changes would compensate for the entirety of the vote enhancement caused by the prisons:

In the House:

- ▶ 37th Middlesex: Move Lunenberg B (250272015, Population 2,407) from WORC 03 to 37th Middlesex. This change also unifies all of Lunenberg.
- ▶ 8th Plymouth: Split the Easton 3 precinct in the 11th Plymouth district to transfer 1,458 people from 11th Plymouth to 8th Plymouth. We suggest transferring blocks 250056002023004, 250056002023011, 250056002023007, 250056002023003, 250056002023000, 250056002023002, 250056002022002, 250056002022007, 250056002022003, 250056002023006, 250056002023005, 250056002022008, 250056002022001, 250056002022000, 250056002022011, 250056002022012, 250056002022004, 250056002022013, 250056002022005, and 250056002023001.
- ▶ 7th Middlesex can be improved by expanding the district into Framingham Precinct 7 or Framingham Precinct 15 within 6th Middlesex.

In the Senate:

- ▶ Norfolk, Bristol & Middlesex: Move Wellesley Precinct A (250213615, Population: 3,393) from First Middlesex & Norfolk to Norfolk, Bristol & Middlesex.
- ▶ First Hampden & Hampshire: Move Chicopee Ward 8 Precinct A (250132773, Population: 3,018) from Second Hampden & Hampshire to First Hampden & Hampshire.
- ▶ Berkshire, Hampshire, Franklin & Hampden: Move the town of Russell (Population: 1,775) from Second Hampden & Hampshire to Berkshire, Hampshire, Franklin & Hampden.

We again thank the Committee for its time and attention to this important issue.

Sincerely,



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