

**Testimony of Aleks Kajstura,
Legal Director, Prison Policy Initiative**

April 28, 2015

SF 455

SUPPORT Article 6, ending prison gerrymandering

Thank you for providing me with the opportunity to provide written testimony in support of Article 6 of SF 455, which would end prison gerrymandering in Minnesota. My name is Aleks Kajstura and I am the Legal Director of the Massachusetts-based non-profit, non-partisan Prison Policy Initiative.¹ For more than a decade, the Prison Policy Initiative has been working to convince the Census Bureau to update their methodology and count incarcerated people as residents of their legal home addresses. But because the Census is slow to make changes, we have also been working very closely with state and local governments on creating interim solutions.

Prison gerrymandering problem in Minnesota

The Census Bureau counts incarcerated people as residents of the communities where prisons are based, as opposed to their homes of record. Even though the Minnesota constitution declares that incarceration does not change a person's residence, Minnesota uses the Census' figures for redistricting purposes. This longstanding flaw in the Census undermines the state's constitutional duty to draw legislative districts on the basis of equal population. The resulting districts give people who live near prisons extra clout, distorting democracy at both the state and local levels:

¹ I am also the author of an analysis of prison gerrymandering in Minnesota after the 2000 Census: *Importing Constituents: Prisoners and Political Clout in Minnesota* (see <http://www.prisonersofthecensus.org/mn/#read>).

- At the state level two state house districts (24B near the City of Faribault, and 39B in the Stillwater area) are each credited with over 2,000 incarcerated people, accounting for just over 5% of each district's population. An additional 1,000 or more incarcerated people are credited to another four state house districts (11B, 38A, 11A, 24A, and 14B), accounting for roughly 2-3% of each district's population. Meanwhile everyone who lives in a district that does not contain a prison has to share their voting power with a full slate of actual residents.
- At the city council and county government level, 35% of a single city ward in Waseca is incarcerated in a federal prison. This gives every 65 residents of that ward the same voting power as 100 residents of the other wards on city issues. (I've found similarly dramatic instances of vote dilution caused by relying on Census counts of prison populations in Pine and Waseca Counties.)

Article 6 will align future redistricting data to state residence law

Article 6 of SF 455 would ensure that the state's redistricting data follow the state's constitutional definition of residence; that for election purposes, "no person loses residence... while confined in any public prison." (Article VII, § 2.)

Minnesota should join states taking lead on ending prison gerrymandering

A total of eight states and more than 200 counties and municipalities have taken steps to eliminate or reduce the effects of prison gerrymandering in their jurisdictions. Additionally, Massachusetts passed a resolution urging the Census Bureau to create a national solution. By passing SF 455, Minnesota can follow New York, Maryland, Delaware and California and end

prison gerrymandering by tabulating incarcerated people at home for redistricting purposes.

By taking action 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.² These two states' experiences working under tight deadline to successfully eliminate prison gerrymandering provide powerful evidence that the adjustments proposed by Article 6 can be easily accomplished in time for the 2021 redistricting.³

No impact on funding

Finally, I would like speak to any potential concerns about the possible impact that counting incarcerated people at home for redistricting purposes could have on funding formulas: There would be no effect on the distribution of federal or state funds, because all funding programs have their own data sources that do not rely on redistricting data. Furthermore, Article 6 of SF 455 explicitly states that "The data prepared by the secretary of state ... shall not be used in the distribution of any state or federal aid."

Conclusion

I support Article 6 of SF 455, ending prison gerrymandering in Minnesota and urge you to pass this bill. If I can answer any questions about this testimony, Article 6, or the experiences of

² 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/>

³ 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>

other states in implementing similar legislation, please do not hesitate to contact me at the email or phone above.

Thank you.


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