

Testimony of Heather C. McGhee  
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Before the  
Census Advisory Committee  
Of the U.S. Census Bureau  
on

**The Census Count and Prisoners:  
The problem, the solutions and what the Census can do  
October 22, 2010**

Dēmos is a national, non-profit, non-partisan public policy, research and advocacy organization committed to building an America where democracy is robust and inclusive, with high levels of electoral participation and civic engagement. To that end, the Dēmos Democracy Program works to reduce barriers to voter participation and engagement, with a particular focus on participation by traditionally disfranchised communities.

We greatly appreciate this opportunity to submit this testimony to the distinguished members of the Census Bureau's Census Advisory Committee.

Over the past several years, Dēmos has been working in partnership with the Prison Policy Initiative and numerous other advocates at the national, state and local level to highlight the inequities of Prison-Based Gerrymandering and to work for solutions. We submit this testimony to recommend that the Census Bureau engage in research to determine how best to end the inequitable practice of prison-based gerrymandering prior to the next Census, building on the successes of several states that enacted legislation to end this practice in 2010 and on some important steps taken by the Census Bureau during the 2010 Census to assist states in that effort.

What do we mean by “prison-based gerrymandering”? A long-standing flaw in the decennial census counts more than 2 million incarcerated people in the wrong place for purposes of redistricting and undermines the “one person, one vote” principle of the 14<sup>th</sup> Amendment. Census data, of course, forms the basis for re-drawing state and local districts each decade to ensure that each district will contain a similar number of people and each resident will therefore have the same access to government, a result required by the one-person, one-vote rule.

However, although people in prison can't vote, and remain legal residents of their home communities under the laws of most states, the Census Bureau currently counts people in prison as residents of their prison cells, not their homes. Using this flawed data to draw

legislative districts grants the people who live near large prisons extra influence at the expense of voters everywhere else.

### **The Problem at the State Level**

Crediting prisoners from all over the state to the predominately rural districts that contain large prisons enhances the weight of a vote in those districts, diluting all other votes in the state.

Prisoners are disproportionately Black and Latino, and outside of the Deep South, most prisons are built in disproportionately white areas. Using Black and Latino prisoners to pad the populations of white legislative districts dilutes minority voting strength state-wide.

Consider a statistic from New York, where the upstate region has steadily been losing population: in the 2000 Census, almost one-third of the persons credited as having “moved” into upstate New York during the previous decade were persons sentenced to prison terms in upstate prisons.<sup>1</sup> In Illinois, 60% of incarcerated persons are from Cook County (Chicago), yet over 90% of them are incarcerated downstate.<sup>2</sup> In Texas, 12% of the population of one rural district consists of incarcerated persons.<sup>3</sup>

### **The Problem at the County and Municipal Level**

Rural county and municipal districts are smaller than state legislative districts, so prison-based gerrymandering can create an even larger problem in distorting representation in communities that include large prisons. Some examples:

- **A true “rotten borough”:** In Anamosa Iowa, a man won a city council seat with two write-in votes, neither of which he cast. There were no candidates and only a handful of voters, because 96% of the district population was incarcerated in a large prison. The handful of voters in the district had 25 times as much influence on the city council as residents elsewhere in the city.<sup>4</sup>
- **“Majority-minority” in name only:** In Somerset County, MD, a county commission district that was deliberately drawn as a majority–minority district in order to settle a Voting Rights Act lawsuit has been unable to elect a candidate of choice to the commission because a prison population, which cannot vote, was counted in the district’s population. The actual African-American resident population in the district is too small to elect a candidate of choice. It would

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<sup>1</sup> Rolf Pendall, Brookings Institution, *Upstate New York’s Population Plateau: The Third Slowest-Growing “State”* (August 2003).

<sup>2</sup> Prison Policy Initiative, “Importing Constituents: Prisoners and Political Clout in Illinois,” available at <http://www.prisonersofthecensus.org/illinois/importing.html>.

<sup>3</sup> Prison Policy Initiative, “Fixing prison-based gerrymandering after the 2010 Census: Texas,” available at <http://www.prisonersofthecensus.org/50states/TX.html>.

<sup>4</sup> See Sam Roberts, *Census Bureau’s Counting of Prisoners Benefits Some Rural Voting Districts*, New York Times, October 23, 2008.

have been possible to draw an effective majority-minority district had the prison population not skewed the data.<sup>5</sup>

### **States and Localities are Ready for Accurate Counts**

In 2010 alone, New York,<sup>6</sup> Maryland<sup>7</sup> and Delaware<sup>8</sup> passed legislation to use state correctional data ensure that districts are drawn on data that counts incarcerated people at home.

The legislative or executive branches in several states (Virginia, Colorado, New Jersey, Mississippi) require or encourage local governments to modify the census and refuse to use prison populations as padding. More than 100 rural counties and municipalities around the country make these adjustments on their own.<sup>9</sup>

### **Solutions: What the Census Can Do**

In a groundbreaking policy shift, the Census Bureau changed its 2010 data publication schedule to make it easier for states and localities to identify prison populations in its redistricting data.<sup>10</sup> We are thankful to the members of the Census Advisory Committee and Census stakeholders across the nation who helped bring about this change. The interim solution of releasing accelerated data will assist governments in removing prisoners from the prison districts—however, states must rely on their own data to assign prisoners to their proper home districts—and the new release is not early enough for every state to benefit.

Fortunately, the Census Bureau can achieve a full and permanent solution for the 2020 Census: revising its “usual residence” rule to count incarcerated persons as residents of the community where they resided prior to incarceration. As established by court cases, and as demonstrated by the variety of policies which the Census Bureau has adopted in absence of specific legislation, the Census Bureau has broad discretion over how to determine where to count individuals in the decennial census.

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<sup>5</sup> Testimony of Brenda Wright, Demos, before the Rules and Executive Nominations Committee of the Maryland State Assembly on House Bill 496, March 8, 2010, available at <http://www.demos.org/publication.cfm?currentpublicationID=9AE5E671-3FF4-6C82-505D9B226AAE80F7>.

<sup>6</sup> Prison Policy Initiative, “New York prison-based gerrymandering bill,” available at [http://www.prisonersofthecensus.org/NYS\\_A9710-D.html](http://www.prisonersofthecensus.org/NYS_A9710-D.html).

<sup>7</sup> No Representation Without Population Act, H.B. 496, 2010 Leg., 427<sup>th</sup> Sess. (Md. 2010), available at <http://mlis.state.md.us/2010rs/billfile/hb0496.htm>.

<sup>8</sup> H.B. 384, 2010 Leg., 145<sup>th</sup> Gen. Assem. (De. 2010), available at <http://legis.delaware.gov/LIS/LIS145.nsf/vwLegislation/HB+384?Opendocument>.

<sup>9</sup> See Demos and Prison Policy Initiative, *States Are Authorized to Adjust Census Data to End Prison-Based Gerrymandering, and Many Already Do* (updated September 2010), available at <http://www.prisonpolicy.org/factsheets.html>.

<sup>10</sup> Prison Policy Initiative, “Census gives data users new opportunities to draw fair districts with its data,” available at <http://www.prisonersofthecensus.org/technicalsolutions.html>.

Dr. Robert M. Groves, Director of the U.S. Census Bureau, addressed some of these issues in a blog post<sup>11</sup> earlier this year, and noted that the Bureau re-evaluates its residence rules after each census:

Some users of census data care about this [the prison counts] for redistricting purposes within states. They observe that prisoners often resided in areas far removed from the location of the prison and should be counted where they're from. They note that the former homes of the prisoners are "cheated" of the benefits derived from the census counts. They argue that the locales of the prisons unfairly benefit from the counted prisoners, even though the prisoners do not enjoy the benefits that the census counts provide to the area.

This decade we are releasing early counts of prisoners (and counts of other group quarters), so that states can leave the prisoners counted where the prisons are, delete them from the redistricting formulas, or assign them to some other locale.

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Counting members of all group quarters is complicated; we re-evaluate our "residence rules" after each census, to keep pace with changes in the society. We'll do that again after the 2010 Census.

For all these reasons, the time is right for the Bureau to undertake the evaluation and research that will be necessary to change its practices for determining the residence of incarcerated persons, so that in the next Census incarcerated persons will be properly counted as residents of their home communities. Thank you again for this opportunity to present our views on this important issue.

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<sup>11</sup> United States Census 2010, "So, How do You Handle Prisons?" available at <http://blogs.census.gov/2010census/2010/03/so-how-do-you-handle-prisons.html>