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Testimony of

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Before the
Rhode Island Senate Committee on Judiciary
on
S0239

SUPPORT

February 23, 2015

Thank you, Mister Chairperson and members of the Committee for providing the opportunity to submit testimony in support of Senate Bill 0239.

I am an attorney and Executive Director of the Massachusetts-based Prison Policy Initiative. For the last 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 Census Bureau's prison count and the prison gerrymandering that results.

Before the Committee today is S0239, which 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. Crediting incarcerated people to the census block that contains the prison, rather than the census block that contains their home address, results in a significant enhancement of the weight of a vote cast in districts with prisons, while diluting the votes cast by all other residents in all other districts in the state.

This bill is essentially identical to S2286A that the Senate unanimously passed last year.

By passing S0239, Rhode Island would ensure that the vast majority of Rhode Islanders do not, relative to those who live near the state prison complex in Cranston, have their votes diluted. By passing this bill, Rhode Island will, as a

state that exhibits one of the most extreme examples of vote dilution caused by prison gerrymandering, finally join the national trend towards solving this problem.

The problem

The concentration of Rhode Island's prisons into just one location in the state makes the problem of state legislative prison gerrymandering more significant than in almost any other state. In most states, prison gerrymandering results in giving a number of districts with prisons 1% or perhaps even 5% more political influence than the residential population of those districts actually warrants. In these states, prison-based gerrymandering is considered a serious ill to be avoided because it dilutes the votes of everyone who does not live next to a prison by 1% to 5%.

In Rhode Island, 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.

Past experience during the most recent 2011-2012 round of redistricting shows that the Rhode Island legislature should not rely on ad-hoc solutions to the systemic problem of the Census Bureau's prison count. The state needs a better approach.

The solution

By passing S0239, Rhode Island can follow New York, Maryland, Delaware and California and end prison-based gerrymandering by tabulating incarcerated people at home for redistricting purposes.¹ A total of eight states, and more than 200 counties and municipalities, listed in the Appendix, have enacted legislation to eliminate or reduce the effects of prison gerrymandering.

Maryland and New York both passed their laws after census day 2010 but with just enough time to implement the laws before the current round of redistricting.² The experience of these two states, working under tight deadline pressure to successfully eliminate prison-based gerrymandering, provides powerful evidence that the adjustments proposed by S0239 can be accomplished in time for the 2021 redistricting. By passing S0239 in this legislative session, the legislature would allow ample planning time to ensure smooth and effective implementation in the next redistricting cycle.

¹ An additional 7 states, Connecticut, Illinois, Kentucky, Massachusetts, New Jersey, Oregon, and Texas, have similar legislation pending in this session.

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/>.

Conclusion

I urge you to pass S0239 as a permanent state-based solution to the problem of prison gerrymandering. Please do not hesitate to contact me if I can answer any questions or help 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.

A handwritten signature in black ink, appearing to read 'P. Wagner', with a long, sweeping horizontal line extending to the right.

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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 & a 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, Greenville, Lee, Prince George, Richmond, Sussex

West Virginia cities: Moundsville

Wisconsin counties: Crawford

Wisconsin cities: Baraboo, New Lisbon, Portage, Prairie du Chien, Stanley