

**Testimony of Peter Wagner,  
Executive Director, Prison Policy Initiative**

**Before the Virginia Senate  
Committee on Privileges and Elections  
February 21, 2012**

**In SUPPORT of HB13**

Thank you, Chairman Obenshain and members of the Committee for providing the opportunity to submit written testimony in support of House Bill 13, “Redistricting local districts; local government may exclude prison populations from its calculation.”

I am an attorney and the Executive Director of the Prison Policy Initiative, a national, non-profit, non-partisan research and policy organization, established in 2001, with an office in Easthampton Massachusetts. For the last decade, I have been studying how the Census Bureau practice of counting incarcerated people as residents of the prison location distorts the electoral process and working with state and local governments to develop solutions.

HB13, before you today, would fix a quirk in Virginia law that requires some counties with large prisons to draw county supervisory districts in a way that gives undue influence to the districts that have prisons and dilutes the votes of other supervisory districts elsewhere in the county. These counties seek the option to exclude the prison-population (which is barred from voting and is not considered a legal resident of the prison location<sup>1</sup>) from the census data used to draw the districts.

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<sup>1</sup> Incarceration is not voluntary, so a prison cell cannot be a residence under Virginia law: “as used in the Virginia election laws, ‘residence’ is substantially synonymous with ‘domicile’ ... A change of place without the intent to abandon the old and acquire a new domicile will not work a change of legal residence.” *Kegley v. Johnson*, 147 S.E.2d 735, 736, 207 Va. 54, 56 (1966) citing *Bruner v. Bunting*, 15 Va. Law Reg. 514, 516-518 (1909).

The bill is a common-sense expansion of a 2001 amendment to Virginia law that first gave some counties the choice to remove some prison populations when drawing supervisory districts. Counties in most states already have this choice, because state law generally does not explicitly require the use of federal census data in redistricting. And in two states — Colorado<sup>2</sup> and Michigan<sup>3</sup> — state law actually *requires* counties to exclude prison populations when redistricting. In my research, more than 100 counties around the country chose to remove prison populations when redistricting after the 2000 Census, and I expect about twice that number to do so during the current redistricting cycle.

Prior to the 2001 amendment, Virginia law mandated that counties “shall use the most recent decennial population figures . . . from the United States Bureau of the Census, which figures are identical to those from the actual enumeration conducted by the United States Bureau of the Census for the apportionment of representatives in the United States House of Representatives.”

The 2001 Amendment created an exception for counties where a state prison population was more than 12% of the total census population. Of the five counties eligible under the law, four (Brunswick, Greensville, Richmond and Sussex) excluded the prison population. The fifth, Buckingham County, arrived at the same result by other means: they split the prison population up between all the districts.

Unfortunately, the 12% threshold did not go as far as it should have. In the 2000 Census, Southampton County was less than 8% incarcerated and therefore ineligible to exclude under the 2001 amendment, but when that prison population was concentrated within a single supervisory district, the county was forced to draw a district that was more than half incarcerated. This gave the residents of the district surrounding the prison more than twice the influence over county affairs as residents of other districts.

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<sup>2</sup> Colo. Rev. Stat. §30-10-306.7(5)(a).

<sup>3</sup> Mich. Comp. Laws § 46.404(g).

HB13 would make two critical expansions to the 2001 amendment:

1. It would also apply to federal prison and regional jail populations, and
2. It would apply to any county that was faced with drawing a *district* that was more than 12% incarcerated.

These changes are subtle, but they will more than double the number of rural counties eligible to draw fair districts that give all residents the same influence over county affairs.

It is impossible to definitively say which counties would be eligible to benefit from HB13 during the next redistricting in 2021, but I expect that most of the following 17 counties would benefit under HB13: Augusta, Bland, Brunswick, Buchanan, Culpeper, Fluvanna, Goochland, Lee, Lunenburg, Mecklenburg, New Kent, Nottoway, Powhatan, Prince Edward, Prince George, Southampton, and Wise counties.

Above, I've discussed the benefits of HB13, and I want to make explicit that the law has no downsides. It would apply only to county government, and would not be mandatory. It would simply give more Virginia counties the same choice exercised by a few Virginia counties — and by counties in most other states — to avoid diluting the votes of county residents who do not live next to prisons.

The bill has been endorsed by *The Roanoke Times* editorial board on January 5, declaring that the bill “would move the commonwealth in the right direction.”<sup>4</sup>

Finally, I understand that some questions were raised last year about the impact of the bill on minority voting rights. The bill would have no negative impact on minority voting rights, and the concept behind the bill was in fact explicitly endorsed by the NAACP National Convention in 2010:

BE IT FURTHER RESOLVED, that the NAACP concludes that until the Census Bureau counts incarcerated people as residents of their homes, the fundamental

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<sup>4</sup> *The Roanoke Times* “Prisoners shouldn’t pad electoral districts” (Jan. 5, 2012) available at <http://www.roanoke.com/editorials/wb/303104>

principle of one person one vote" would be best satisfied if redistricting committees refused to use prison counts to mask population shortfalls in districts that contain prisons; and

BE IT FINALLY RESOLVED, that the NAACP advocate that **the prison population census count not be used in any legislative district** at the local, state and federal level.<sup>5</sup>

For these reasons, I urge you to vote in favor of HB13.

I thank you for the opportunity to present this testimony, and if I can provide any additional information to the Committee, please do not hesitate to contact me at (413) 961-0002.

Thank you.



Peter Wagner  
Executive Director

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<sup>5</sup> Emphasis added. Resolution of the 101st NAACP Convention, July 2010, available at: [http://www.prisonersofthecensus.org/resolutions/NAACP\\_2010.html](http://www.prisonersofthecensus.org/resolutions/NAACP_2010.html)