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Testimony of Peter Wagner, Executive Director, Prison Policy Initiative

Before the Rhode Island House Judiciary Committee

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There is a clear trend across America to avoid using prison populations to skew representation at local levels of government, and four states have already taken affirmative legislative action to prevent prison-based gerrymandering in their state legislatures. Rhode Island, however, is unfortunately poised to step into the national spotlight by providing one of the most dramatic examples of how prison populations can be used to distort representation.

Using prison populations to pad out under-populated districts is not only unfair to all other residents of the state that do not happen to live near a prison, but it's contrary to Rhode Island law, which states that a person's home is still considered their residence, even during incarceration. (Rhode Island General Laws §17-1-3.1.)

Taking one step forward, two steps back

We are concerned that Rhode Island has missed an important opportunity to avoid prison-based gerrymandering and that the proposed plan is a step backwards in comparison to both the current districts and an earlier proposed plan.

The proposed district plan published on December 12, 2011 (House Plan D) had some positive attributes in regards to how prison populations were handled.¹ In "House Plan D", the complex was split somewhat evenly between three districts, 15, 16, and 20:

District	Total prison population by district	Block(s) containing state prison populations	Facility	Incarcerated population in block
District 15	1230	44 007 014200 2030	Dorothea Dix Minimum Security Facility	82
		44 007 014200 2037	John J. Moran Medium Security Facility	1043
		44 007 014200 2061	Gloria McDonald Awaiting Trial & Medium	105
District 16	908	44 007 014200 2025	Intake Service Center	908
District 20	1295	44 007 014200 2023	High Security Center	86
		44 007 014200 2053	Minimum Security	461
		44 007 014200 2055	Donald Price Medium Security Facility	310
		44 007 014200 2072	Max Security	438

¹ "House Plan D" incorporated many of the suggested solutions to prison-based gerrymandering presented in testimony of the ACLU Rhode Island Affiliate, before the Rhode Island Reapportionment Commission, October 17, 2011. Available at http://www.riaclu.org/documents/Reapportionment_testimonyfinal.pdf

We note that each of these districts was also somewhat overpopulated, thereby further reducing the impact of the prison population on any individual district. This was a positive step.

Unfortunately, “House Plan D-amended” reverses most of these gains and these reversals are maintained in the “House Plan D-amended-fixed” plan before you today. We bring to your attention several serious regressions from “House Plan D”.

The prison complex is now split between only two districts, Districts 15 and 20. With one key regressive exception, we note that the prisons are currently divided exactly as they were in 2001 between Districts 15 and 16. That key exception is that the Minimum Security facility in Providence County Tract 014200 Block 2053 is now placed in District 15.

We note that had the existing boundary been maintained, the prison population would be almost evenly divided between the two districts. Instead, District 20 now contains 2,203 incarcerated people, far more than any other district. Almost 15% of this district is incarcerated residents of other parts of this state, giving every group of 85 residents in this district the same influence as 100 residents in any other district.

While the proposed Districts 15 and 20 are still slightly overpopulated, this overpopulation is so minuscule compared to the prison populations now included in the districts that it no longer has any meaningful mitigating effect.

“House Plan D” demonstrated that it was possible to split the prisons in such a way that the vote-dilutive effect of prison-based gerrymandering could be greatly reduced. We urge you to resist House Plan D’s march toward prison-based gerrymandering.

Long term solutions

There are longer-term solutions to the problem of prison-based gerrymandering than the incremental solutions discussed above. Ideally, the Census Bureau would count incarcerated people as residents of their home addresses. Or the state could enact a system to collect home addresses and adjust the redistricting data prior to the start of line drawing. Four states have passed legislation to do exactly this, and a similar bill (H7090, Representatives Williams, Cimini, Handy, Slater, and McCauley) has been introduced in Rhode Island.

I understand that concerns were raised that New York and Maryland had problems in their implementation of their laws ending prison-based gerrymandering. Specifically that prisoners refused to cooperate with implementation of the law and that only 60% of incarcerated people were successfully reallocated to their homes. These concerns are factually incorrect. Both states relied on existing administrative records held by the Department of Corrections. Both states report a success rate of at least 78% ²; and most

² See Associated Press, “Deal struck on NY redistricting count”, *Wall Street Journal*, December 22, 2011 and Declaration of James Cannistra, December 1, 2011 as attachment 2 to the Attorney Generals Memorandum in Support of Motion to Dismiss, Or, in the Alternative, for Summary Judgement, and Opposition to Motion for Preliminary Injunction, available at http://www.prisonersofthecensus.org/fletcher/AG_exhibit_2.pdf and attached.

of the “problems” cited in the press were actually implementation details intended by the law’s language.

If New York and Maryland deserve criticism, it is not for their implementation of the law, but for their excessive modesty in documenting their work. Both states include as “failures” not counting out-of-state prisoners that their statute explicitly bars from including in the districts. Similarly, both states label as “failures” blank and incomplete addresses found in Department of Corrections files. The statutes in both states explicitly — if differently — discussed this possibility and directed how those addresses should be handled.

(For a detailed review of the Maryland process, including the challenges overcome, see the attached affidavit of James Cannistra, who was responsible for the implementation of the No Representation Without Population Act. He submitted the affidavit in support of the law in *Fletcher v. Lamone*, which challenged the constitutionality of the law ending prison-based gerrymandering. The federal three judge panel unanimously dismissed the lawsuit.³)

In any endeavor, there is of course room for improvement. But I urge the Rhode Island legislature to be cognizant of the context. Ten years ago, Maryland and New York counted every incarcerated person in the wrong location. This decade, they counted most in the correct location. Further, both Maryland and New York passed legislation in 2010 *after* the 2010 Census had been collected. They had to rely on administrative records that were collected for a different purpose and had never been intended to be mapped. They did an impressive job with what they were given. In fact, by my calculations, after excluding out-of-state addresses and clearly unmappable addresses, the technical staffs were able to map virtually every possible address. And already New York is looking to how they can further improve their law by focusing improving the data collected by the Department of Corrections.⁴

Of course, these minor challenges seen in New York and Maryland from a bill passed *after* the 2010 Census would be unlikely to affect the bill currently under consideration in Rhode Island, in preparation for a Census 8 years from now. Unlike these states, Rhode Island has a very good collection of home addresses of incarcerated people that has already been tested. In 2004, the Rhode Island Family Life Center mapped this data with an 88% success rate.⁵ The improvement of data collection practices between 2004 and 2020 would surely make this data even easier to use.

³ *Fletcher v. Lamone* No. RWT-11cv3220 slip op. (D. Md. Dec. 23, 2011) available at http://www.prisonersofthecensus.org/fletcher/three_judge_opinion.pdf

⁴ See Associated Press, “Deal struck on NY redistricting count”, *Wall Street Journal*, December 22, 2011, quoting Senator Nozzolio (a co-chair of the state’s redistricting process and the leading *opponent* of the law) calling for a new law or regulations to ensure that the Department of Corrections collects data in a way that will be easier to use in the future.

⁵ See Political Punishment: The Consequences of Felon Disenfranchisement for Rhode Island Communities, Rhode Island Family Life Center. September, 2004, available at <http://www.prisonpolicy.org/scans/providence-report.pdf>

Conclusion

In conclusion, I urge you to reconsider the amendments to “House Plan D” that concentrated the state’s prison complex into just 2 House districts. The unamended “House Plan D” showed that it was possible to reduce the vote dilutive effect of the Census Bureau’s prison miscount, and I urge you to make that possibility a reality.

And when H7090 comes before you with a permanent state-based solution to the problem of prison-based gerrymandering, I urge you to give that bill careful consideration. 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 this law in Maryland or New York.

I thank you for the opportunity to present this testimony.



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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
GREENBELT DIVISION**

PATRICIA FLETCHER, *et al.*,

Plaintiffs,

v.

Civil Action No: 8:11-cv-03220-RWT

LINDA H. LAMONE, *et al.*,

Defendants.

* * * * *

DECLARATION OF JAMES CANNISTRA

I, James Cannistra, being competent to testify, hereby affirm on my personal knowledge as follows:

1. I am the Director of the Data Planning Services Group in the Maryland Department of Planning (“MDP”). I am a certified GIS Professional (GISP). In that capacity, I was responsible for the prisoner reallocation adjustments to the federal census data required by the “No Representation Without Population Act” of 2010 (the “Act”) and COMAR 34.05.01 *et seq.*
2. On February 4, 2011, MDP received a computer database from the Maryland Department of Public Safety and Correctional Services (“DPSCS”) listing the last known pre-incarceration addresses of all prisoners housed within state correctional facilities as of April 1, 2010, Census Day.
3. The database contained 22,064 records of prisoners under the supervision of the Division of Corrections (“DOC”).
4. The database also contained records of 3,045 additional persons under the supervision of the Division of Pre-Trial Detention Services (“DPDS”). Those records related to persons under the supervision of DPDS were not included in the database because they are not “incarcerated persons” pursuant to the Act.
5. We started with a general review of the remaining database records to identify last known addresses that could not be geocoded (the process of finding geographical coordinates for

an address) or addresses that needed to be excluded from the geocoding process because they were out-of-state addresses.

6. In this general review we found 3,358 addresses (15.22%) that could not be geocoded or needed to be segregated from the geocoding process. The 3,358 addresses that could not be geocoded or needed to be excluded from the geocoding process were as follows:

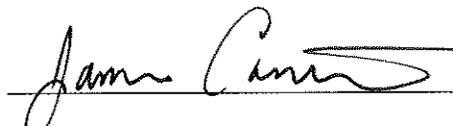
Segregated Addresses	Number	Percent of Total
Correctional Facility	249	1.13%
Incomplete Address	111	0.50%
No Address or Homeless	1,635	7.41%
Out-of-State	1,326	6.01%
Post Office Box	20	0.09%
Rural Route Box	17	0.08%
Total	3,358	15.22%

7. After the segregation of the 3,358 addresses from the data, the remaining 18,706 addresses were processed for geocoding using the 2010 TIGER address locator included within ESRI GIS software that is used by MDP.
8. As part of the census block assignment process, Caliper Corporation (“Caliper”) was able to locate five persons to in-state addresses or it was determined that they should be counted at other locations, which reduced the initial MDP count of out-of-state prisoners from 1326 to 1321. The 1,321 persons whose pre-incarceration address was out-of-state were deleted from the database pursuant to the terms of the Act.
9. Pursuant to COMAR 34.05.01.04.B, MDP corrected addresses so that they could be geocoded. Thus, any addresses that were un-geocodable were reviewed individually to check for possible corrections. Among the efforts that my team undertook to correct these addresses were:
 - Verifying and correcting zip codes against the USPS zip code locator (<http://zip4.usps.com/zip4/welcome.jsp>);
 - Correcting misspellings of city and street names (e.g. 100 Halana Drive to 100 Helena Drive);
 - Correcting or adding street suffix (street, avenue, boulevard, etc) (e.g. 1510 N Aisquith to 1510 North Aisquith Street);
 - Correcting street direction (e.g. 1463 W Key Parkway to 1463 Key Parkway); and
 - Removal of extra information such as decimal point or apartment number (e.g. 9119 Chesapeake Ave apt 6 to 9119 Chesapeake Ave).

10. There were 2337 records that had some type of correction. Some records fell into multiple categories or types of corrections such as correcting both a zip code and a street suffix.
11. After the correction of addresses was complete, geocoding was performed using ESRI GIS software and the US Census Bureau's 2010 TIGER/line street file for Maryland as the basis for the address locator. The total database produced 17,140 addresses (16,840 matched and 300 tied) that were geocoded at the person's last known residence. This match rate was 77.68% of the 22,064 persons.
12. The Federal Bureau of Prisons refused to provide prisoner records from the one Federal Correction Institution and its adjacent satellite camp located in Cumberland, Maryland . (attached correspondence from the Federal Bureau of Prisons and the U.S. Department of Justice). MDP determined the number of prisoners in the Cumberland federal facility by examining the 2010 Census block level data for this Federal Correction Institution and determined that 1,514 federal prisoners were in these census blocks. MDP also examined the weekly population report from the Federal Bureau of Prisons at http://www.bop.gov/locations/weekly_report.jsp. In accordance with COMAR 34.05.01.04, these federal prisoners remained at the Federal Correction Institution in Cumberland, Maryland within those two census blocks.
13. Final steps in preparing the database included preparing coordinates for each geocodable address. Segregated addresses, with the exception of the out-of-state addresses, were assigned (geocoded) the coordinates of the correctional facility where the prisoner was located in accordance with COMAR 34.05.01.04.
14. State and federal facility addresses were determined from address information provided for each facility and obtaining coordinate information from Google Earth.
15. Out-of-state addresses were assigned default, or 0, coordinates.
16. MDP transferred the prepared database to Caliper in late February of 2011.
17. After receipt of the data from MDP, Caliper then undertook the process of assigning each geocoded addresses to its appropriate census block. MDP worked with Caliper to resolve questions as part of this process. After the recategorization of special cases, there were 16,988 incarcerated persons were assigned to their home address, 3755 were assigned to the correctional facilities, and 1321 were removed from their correctional facilities as out-of-state residents.

I declare under the penalty of perjury that the forgoing is true and correct.

Executed on December 1, 2011


James Cannistra