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Testimony of

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Before the
Rhode Island House Committee on Judiciary
on
H7090

SUPPORT

March 6, 2012

Thank you, Ms. Chairperson and members of the Committee for providing the opportunity to submit written testimony in support of House Bill 7090.

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 miscount and the prison-based gerrymandering that results.

Before the Committee today is H7090, which would correct, within the state of Rhode Island, a long-standing flaw in the decennial Census that counts 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 at the expense of all other residents in all other districts in the state.

By passing H7090, Rhode Island would ensure that the people who live near the Adult Correctional Institution (ACI) in Cranston do not receive extra representation, and the state would be joining the national trend towards eliminating prison-based gerrymandering.

The problem

The concentration of Rhode Island's prisons into just one location in the state makes the problem of state legislative prison-based gerrymandering more significant than in almost any other state. In most states, prison-based gerrymandering results in giving a number of districts with prisons 1% or perhaps even 5% more political influence than the residential population actually warrants. In these states, prison-based gerrymandering is considered a serious ill to avoid 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.

To be sure, there are other ways to address the problem of prison-based gerrymandering than counting incarcerated people at home, but the past experience of the Rhode Island Reapportionment Commission struggling with this issue suggests that a permanent legislative fix is required.

In 2002, the commission split the prisons between two districts (15 and 16). In 2011, the Commission initially endorsed in House Plan D-Amended the interim proposal put forth by the ACLU of Rhode Island: splitting the prisons into three districts thus mitigating the distortion caused in any one district. Later, the Commission reversed itself and split the prison complex into two unequal portions between Districts 15 and 20. While some experts have explained that the final 2012 map duplicated the ACI split enacted 10 years prior, the new district 15 boundary is different in one key respect; it transfers the Minimum Security facility out of the 15th district across Howard Avenue. Had the existing boundary been maintained, this prison complex would have been split into two even parts; but instead the majority of the prisons were concentrated in the 20th district.

Redistricting happens on a very compressed timeline. With proper planning, appropriate procedures can be implemented in 2020 to protect the voting rights of all people who do not live immediately adjacent to a large prison. It is theoretically possible to split a prison complex into a sufficient number of pieces so as to all but eliminate the vote enhancement caused by the Census Bureau's prison miscount. But there are significant physical, practical and political limits to how many pieces a geographically concentrated complex like the ACI can be split.

Past experience shows that the Rhode Island legislature should not rely on ad-hoc solutions to the systemic problem of the Census Bureau's prison miscount.

The solution

By passing H7090, Rhode Island can follow New York, Maryland, Delaware and California and decide to count incarcerated people at home for redistricting purposes and end prison-based 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. The experience of these two states, working under tight deadline pressure to eliminate prison-based gerrymandering, provides powerful evidence that the adjustments proposed by H7090 for 2021 can be accomplished.

I understand that a concern was raised at a Rhode Island Reapportionment Commission meeting that New York and Maryland had difficulty implementing their law. The concern was that because prisoners refused to cooperate with implementation of the New York and Maryland laws, only 60% of incarcerated people were successfully reallocated to their homes. These concerns are factually incorrect.

Neither state required prisoner cooperation, as both states relied on existing administrative records held by the Department of Corrections. Both states reported a success rate of at least 78%¹; and most 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.²)

¹ 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.

² *Fletcher v. Lamone* No. RWT-11cv3220 slip op. (D. Md. Dec. 23, 2011) available at http://www.prisonersofthecensus.org/fletcher/three_judge_opinion.pdf

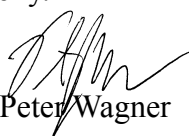
In any endeavor, there is of course room for improvement. But I urge the Rhode Island legislature to be cognizant of the context. Ten years ago, Maryland and New York — like Rhode Island — counted every incarcerated person in the wrong location. This decade, Maryland and New York counted most incarcerated people 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 unmapable 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 on improving the data collected by the Department of Corrections.³

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 H7090 that prepares for a Census 8 years from now. Unlike these states, Rhode Island currently 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.⁴ The improvement of data collection practices between 2004 and 2020 would surely make this data even easier to use.

Conclusion

In conclusion, I urge you to pass H7090 as a permanent state-based solution to the problem of prison-based 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 this law in Maryland or New York.

I thank you for the opportunity to present this testimony.



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³ 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.

⁴ 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>

**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