



Testimony of Dale Ho
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Introduction

Good morning. My name is Dale Ho, and I serve as Assistant Counsel with the NAACP Legal Defense and Educational Fund (LDF). Founded under the direction of Thurgood Marshall, LDF is the nation's oldest civil rights law firm. The quest for the unfettered political participation of all Americans has been and remains an integral part of LDF's mission.

I am honored to appear at today's hearing held by the Joint Committee on Judiciary. My testimony today will address the practice known as "prison-based gerrymandering," which is the drawing of election district lines based on data from the United States Census Bureau that counts incarcerated individuals where they are confined, rather than where they are from.

By bringing an end to prison-based gerrymandering, the legislation proposed today will bring Connecticut's redistricting process in line with basic principles of equality, while also eliminating potential legal issues that may arise during the redistricting process. As things currently stand, prison-based gerrymandering raises substantial concerns under both the U.S. Constitution and Section 2 of the federal Voting Rights Act.¹ The General Assembly now has a unique opportunity to resolve these issues in advance of the upcoming redistricting cycle by enacting this legislation.

Prison-Based Gerrymandering and the One Person, One Vote Principle

Under Connecticut law, prisoners are not legal residents of the communities where they are held. General Statutes of Connecticut § 9-14 provides that a person does not gain or lose legal residence by virtue of being incarcerated.² This legal rule comports with common sense: incarcerated individuals do not choose the districts in which they are held, and can be moved at any time at the discretion of the Department of Corrections. They do not interact with or develop enduring ties to the surrounding communities. And, of course, they cannot vote as residents of those communities.³ They are not "constituents" of those districts in any normal sense of the word.

But prison-based gerrymandering contravenes basic legal principles on residence. Moreover, it artificially inflates population numbers, and thus, political influence, in the districts where prisons are located, at the expense of all other voters.⁴ This raises substantial concerns

¹ 42 U.S.C. § 1973 et seq.

² Gen. Stat. Conn. §9-14: "Electors residing in state institutions. No person shall be deemed to have lost his residence in any town by reason of his absence therefrom in any institution maintained by the state. No person who resides in any institution maintained by the state shall be admitted as an elector in the town in which such institution is located, unless he proves to the satisfaction of the admitting official that he is a bona fide resident of such institution."

³ See Peter Wagner & Christian de Ocejo, Prison Policy Initiative, *Importing Constituents: Incarcerated People and Political Clout in Connecticut* (March 25, 2010), available at <http://www.prisonersofthecensus.org/ct/report.html>.

⁴ See Prison Policy Initiative, *The Problem*, available at <http://www.prisonersofthecensus.org/impact.html>.

under the “one person, one vote” principle. The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution requires that electoral representation—other than to the United States Senate—“be apportioned on a population basis.”⁵ Accordingly, election districts must hold roughly the same number of constituents, so that everyone is represented equally in the political process and that each constituent has the same level of access to an elected official.

The democracy-distorting effect of prison-based gerrymandering in Connecticut is substantial given the skyrocketing growth of the prison population over the previous 25 years. While the prison population stood at approximately 5,000 in 1985, that figure almost quadrupled to nearly 19,000 by 2007.⁶ Under the current districting plan, seven House districts can only satisfy minimum population requirements by counting prisoners as among their so-called “constituents.” In each of these seven districts, more than five percent of the purported “population” actually consists of incarcerated individuals,⁷ most of whom are actually legal residents of another part of Connecticut. I note that these seven districts are represented by members of both major political parties, demonstrating that this is truly a non-partisan issue.⁸

It would be inaccurate to say that the current system of prison-based gerrymandering benefits the rural towns and cities that host prisons. To the contrary, the democracy-distorting effects of prison-based gerrymandering are felt most keenly at the local level, where total population numbers are smaller and the presence of large prison facilities can have a greater skewing effect.⁹ Not surprisingly, some towns with large prison populations, such as the town of Enfield, have recognized this problem and have adjusted their population data accordingly for redistricting purposes.¹⁰ That solution, which works at the local level for places like Enfield, will work equally well for the state as a whole.

⁵ See *Reynolds v. Sims*, 377 US 533, 567 (1964) (“Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests. As long as ours is a representative form of government, and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system.”)

⁶ See American Civil Liberties Union of Connecticut, *Ending Prison Overcrowding Is 2011 Target* (citing data from CT Office of Policy and Management), available at <http://www.acluct.org/legislation/criminaljustice/endingprisonovercrowding20.htm>

⁷ See Wagner & de Ocejó, *supra* note 3.

⁸ See *id.*

⁹ As one example, the town of Cheshire has had to draw disproportionate districts because prison populations mean that one district had 4900 actual voters while another only had 3700. See Peter Wagner, Prison Policy Initiative, *Representatives Lawlor and Holder-Winfield Announce Legislation to End Prison-based Gerrymandering* (March 31, 2010) available at <http://www.prisonersofthecensus.org/news/2010/03/31/yaleevent/>.

¹⁰ Prison Policy Initiative, *Fixing Prison-Based Gerrymandering after the 2010 Census: Connecticut*, (March 2010), available at <http://www.prisonersofthecensus.org/50states/CT.html>.

Prison-Based Gerrymandering and Section 2 of the Voting Rights Act

Prison-based gerrymandering also raises concerns under Section 2 of the federal Voting Rights Act, which prohibits any “voting . . . standard, practice, or procedure . . . which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color.”¹¹ Section 2 prohibits not only those voting practices that deny the right to vote outright on the basis of race, but also those practices that have a dilutive “effect” on minority vote power.¹²

It is indisputable that prison-based gerrymandering has precisely such an effect in Connecticut. Three points establish this fact: (1) the composition of the prison population; (2) the demographics of incarcerated individuals’ home communities; and (3) the comparative demographics of the places where they are held.

First, African Americans and Latinos comprise only 19 percent of Connecticut’s population, but are 72 percent of the state’s prisoners.¹³ In Connecticut, Latinos are incarcerated at nearly 7 times the rate of whites, and African Americans at nearly 12 times the rate of whites.¹⁴ The population at issue here is comprised overwhelmingly of people of color.

Second, Connecticut’s prison population comes disproportionately from its cities, which are in turn largely home to Connecticut’s communities of color. For example, New Haven and Hartford – cities that are about 40% African-American (or 4 times the statewide percentage)¹⁵ – are the home of residence for about 29% of the state’s incarcerated population.¹⁶ These are the communities that suffer most acutely from a dilution of voting power when so many of their residents are counted elsewhere.

Third – and this is the crucial point – the vast majority of incarcerated individuals in Connecticut are held in areas that are far removed from their home communities, both geographically and demographically. Seventy-five percent of all prison cells in Connecticut are located in state assembly districts that are disproportionately white.¹⁷ One stark example is House District 59, where 14.9% of the so-called “constituents” are incarcerated, and, of the 3,000 African Americans and Latinos who are purported “constituents,” 90% of African

¹¹ 42 U.S.C. § 1973(a) (2006).

¹² See *Bartlett v. Strickland*, 129 S. Ct. 1231, 1241 (2009).

¹³ See Prison Policy Initiative, *Ending Prison-based Gerrymandering Would Aid the African-American and Latino Vote in Connecticut* (November 17, 2010) available at http://www.prisonersofthecensus.org/factsheets/ct/CT_AfricanAmericans_Latinos.pdf.

¹⁴ See Sentencing Project, *Connecticut*, available at <http://www.sentencingproject.org/map/statedata.cfm?abbrev=CT&mapdata=true> (noting white incarceration rate of 211 per 100,000 people, as compared to 2,532 incarcerated African American persons per 100,000, and 1,401 incarcerated Latinos per 100,000 people).

¹⁵ For instance, the populations of New Haven and Hartford are nearly 40 percent African-American (37.4% and 38.1%, respectively), as compared to only 9.1% for the State. See U.S. Census Bureau, *State & County QuickFacts*, available at <http://quickfacts.census.gov/qfd/index.html>.

¹⁶ See Prison Policy Initiative, *supra* note 10.

¹⁷ See Prison Policy Initiative, *supra* note 13.

Americans and 74% of Latinos are actually incarcerated¹⁸ – and are legal residents of other parts of the state. The outsize political influence of districts such as this are built on the backs of incarcerated, disfranchised populations of color.

A final, but related, point is that prison-based gerrymandering places limits on minority constituents' access to their elected representatives. When, for instance, an incarcerated person from Hartford has concerns as a constituent, she must undoubtedly look to a legislator representing her home district in Hartford, rather than to the elected official who represents the district where her prison cell is located. Thus, the legislators who represent districts in cities like Hartford or New Haven are effectively spread thin – they must respond to the concerns of their constituents who are physically present in their districts, as well as those who are incarcerated elsewhere. Put another way, constituents in those districts lack the same level of access to their representatives that people in other districts have.

In sum, prison-based gerrymandering dilutes the political power of minority voters in Connecticut and undermines principles of fair representation. By reallocating incarcerated individuals to their home addresses, corrective legislation will equalize the number of true constituents in election districts throughout the state, and thus ameliorate the long-standing discriminatory effects of prison-based gerrymandering.

The Solution

As courts have recognized, States have the freedom to correct how the Census Bureau counts prisoners. There is no law or constitutional requirement that states must rely exclusively on Census data during redistricting.¹⁹ In fact, states and localities often use different methods of redistricting other than straight Census numbers.²⁰ Until changes are made within the Census Bureau itself, it is up to individual states to ensure that they provide for equal representation for all of their residents.

Last year, Delaware, Maryland and New York each enacted legislation ending prison-based gerrymandering in their states.²¹ Those states are demonstrating that a solution is within

¹⁸ *See id.*

¹⁹ *See Bethel Park v. Stans*, 449 F.2d 575, 583 (3rd Cir. 1971) (“Although a state is entitled to the number of representatives in the House of Representatives as determined by the federal census, it is not required to use these census figures as a basis for apportioning its own legislature.”).

²⁰ LDF has produced a report on prison-based gerrymandering which contains a series of recommended steps that state legislatures should take. That report is available online at http://naacpldf.org/files/publications/captive_constituents.pdf.

²¹ Delaware HB 384 (“The Act provides that the General Assembly may not count as part of the population in a given district boundary any incarcerated individual who was not a resident of the State prior to the individual’s incarceration. In addition, the Act requires that an individual who was a resident of the State of Delaware prior to incarceration be counted at the individual’s last known residence prior to incarceration, as opposed to at the address of the correctional facility.”); New York part XX of the revenue budget A9710-D (“...For such purposes, no person shall be deemed to have gained or lost a residence, or to have become a resident of a local government, as defined in subdivision eight of

the grasp of the Connecticut legislature. All that remains necessary is the political will to implement this practical, straightforward solution.

As we stand on the cusp of a new redistricting cycle, the General Assembly has a unique and important opportunity to stand up for basic principles of equality in our democratic processes. Each Connecticut resident should be represented equally in the political process, and the power of their voice should not depend upon whether they live near a prison.

section two of this chapter, by reason of being subject to the jurisdiction of the department of correctional services and present in a state correctional facility pursuant to such jurisdiction.”); Maryland HB 496 “No Representation Without Population Act of 2010” (“The population count... shall count individuals incarcerated in the state or federal correctional facilities, as determined by the decennial census, at their last known residence before incarceration if the individuals were residents of the state.”)