

EM



Testimony of Leah Aden
Assistant Counsel, Political Participation Group
NAACP Legal Defense and Educational Fund, Inc.

H.B. 6679

Connecticut General Assembly
Joint Committee on Judiciary
LOB Room 1E

April 1, 2013

Introduction

Good morning. My name is Leah Aden, and I serve as an Assistant Counsel with the NAACP Legal Defense and Educational Fund (LDF). Founded under the leadership of Thurgood Marshall, LDF is the nation's oldest and premier civil rights law firm. The achievement of the full, equal, and active participation of *all* Americans in the political process continues to be one of LDF's core objectives.

I am pleased to submit this written testimony for today's hearing held by the Joint Committee on Judiciary. My testimony concerns HB 6679 and focuses on "prison-based gerrymandering," the practice of states like Connecticut (and the local governments within them) of counting incarcerated people as residents of the places where they are confined, rather than where they lived pre-arrest, for redistricting purposes, based on United States Census Bureau (Census Bureau) data.

By enacting the legislation proposed today, Connecticut's General Assembly has several significant opportunities, including to: (1) bring the State's redistricting process in line with the basic constitutional principle of "one person, one vote" and Section 2 of the federal Voting Rights Act¹; and (2) join the leading ranks of other states, like Maryland, Delaware, New York, and California, that have adopted similar legislation ending prison-based gerrymandering. Having previously considered legislation in at least two other sessions that would have addressed this issue, the time is now for this General Assembly to end prison-based gerrymandering before the next redistricting cycle.

Finally, notwithstanding the general, noble purpose of this proposed legislation, I offer for your consideration a few friendly amendments to the legislation.

Each Person's Vote Should Count Equally in Connecticut

HB 6679 calls for certain Connecticut officials to work in tandem to adjust population data to count incarcerated people at their last pre-incarceration hometown address where, for legal purposes, they continue to reside, rather than at their incarcerated facility town address. Under Connecticut law, incarcerated people are not legal residents of the places where they are confined. General Statutes of Connecticut § 9-14 provides that a person does not gain or lose legal residence by virtue of being incarcerated.² Incarcerated people do not choose the districts in which they are confined, and can be moved at any time at the discretion of the Department of Corrections. They do not interact with or develop meaningful and enduring ties to the communities surrounding the prison facilities. They cannot use local services such as parks, libraries, highways, and roads. Significantly, incarcerated people cannot vote as residents of the

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."

places where they are confined.³ Thus, they are not “constituents” of those districts in any ordinary sense of the word. In short, prison-based gerrymandering contravenes basic legal principles on residence and, thus, HB 6679 brings Connecticut in line with state law.

Moreover, prison-based gerrymandering violates the one person, one vote constitutional principle. It artificially inflates population numbers, and thus, the political influence, of the voters in districts where prisons are located, to the detriment of *all* other voters who do not live in districts with prisons.⁴ 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 all constituents are represented equally in the political process and each constituent has the same level of access to an elected official.

Yet, in Connecticut, prison-based gerrymandering distorts this democratic principal because the number of incarcerated people has exploded over the last 25 years. While the State’s incarcerated population was approximately 5,000 in 1985, that number nearly quadrupled to approximately 19,000 by 2007.⁶ In light of the massive statewide prison population, under the post-2000 redistricting plan, seven House districts only satisfied minimum population requirements by counting incarcerated people as among their so-called “constituents,” notwithstanding that in each of these seven districts, more than five percent of the purported “population” consisted of incarcerated individuals,⁷ most of whom, as discussed above, were legal residents of another part of Connecticut. And, I must impress upon this bi-partisan Committee that representatives from both major political parties serve these seven districts. So this prison-based gerrymandering problem is a non-partisan issue that all members of the General Assembly should be concerned about given the special treatment afforded certain districts with prison industries.⁸

³ See Peter Wagner & Christian de Ocejo, Prison Policy Initiative, *Importing Constituents: Incarcerated People and Political Clout in Connecticut* (Mar. 25, 2010), available at <http://www.prisonersofthecensus.org/ct/report.html> (last visited Mar. 31, 2013).

⁴ See Prison Policy Initiative, *The Problem*, available at <http://www.prisonersofthecensus.org/impact.html> (last visited Mar. 31, 2013).

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 Connecticut Office of Policy and Management), available at <http://www.acluct.org/legislation/criminaljustice/endingprisonovercrowding20.htm> (last visited Mar. 31, 2013).

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

⁸ See *id.*

Prison-Based Gerrymandering Dilutes Minority Voting Strength in Connecticut

In Connecticut, prison-based gerrymandering also undermines the meaningful opportunity for minority communities to elect a candidate of their choice, raising substantial concerns under Section 2 of the federal Voting Rights Act (Section 2). Section 2 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.”⁹ Section 2 also prohibits those voting practices that deny the right to vote outright on the basis of race, *and* those practices that have a dilutive “effect” on minority vote power.¹⁰

Prison-based gerrymandering unquestionably has such a dilutive effect on the political influence of those voters, often people of color, who reside in districts where prisons are not located in Connecticut. This is because of three realities: (1) the racially disparate composition of Connecticut’s prison population; (2) the demographics of incarcerated people in their pre-arrest home communities; and (3) the comparative demographics of the places hosting prisons.

First, African-American and Latino people comprise approximately 19 percent of Connecticut’s population, but are 72 percent of the state’s incarcerated people.¹¹ In Connecticut, African-American people are incarcerated approximately 12 times as often as are White people.¹² Latino people are incarcerated approximately 7.5 as often as are White people.¹³

Second, Connecticut’s prison population derives disproportionately from its cities, which are largely the home communities of Connecticut’s people of color. For example, New Haven and Hartford – cities that are approximately 40 percent African-American (or approximately 4 times the statewide percentage)¹⁴ – are the home residence for approximately 29 percent of the state’s incarcerated population.¹⁵

Third, the vast majority of incarcerated people in Connecticut are confined in areas that are far removed from their pre-arrest home communities, both geographically and demographically. Seventy-five percent of all prison cells in Connecticut are located in state

⁹ 42 U.S.C. § 1973(a) (2006) (emphasis added).

¹⁰ See *Bartlett v. Strickland*, 129 S. Ct. 1231, 1241 (2009).

¹¹ See Prison Policy Initiative, *Ending Prison-based Gerrymandering Would Aid the African-American and Latino Vote in Connecticut* (Nov. 17, 2010) available at http://www.prisonersofthecensus.org/factsheets/ct/CT_AfricanAmericans_Latinos.pdf (last visited Mar. 31, 2013).

¹² 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) (last visited Mar. 31, 2013).

¹³ *Id.*

¹⁴ For instance, the populations of New Haven and Hartford are nearly 40 percent African-American (35.4% and 38.7%, respectively), as compared to only 11.1% for the State. See U.S. Census Bureau, *State & County QuickFacts*, available at <http://quickfacts.census.gov/qfd/index.html> (last visited Mar. 31, 2013).

¹⁵ See *Fixing Prison-Based Gerrymandering after the 2010 Census: Connecticut*, (Mar. 2010), available at <http://www.prisonersofthecensus.org/50states/CT.html> (last visited Mar. 31, 2013).

assembly districts that are disproportionately comprised of white persons.¹⁶ One stark example is House District 59, where 14.9 percent of the so-called “constituents” are incarcerated, and, of the 3,000 African-American and Latino people who are purported “constituents,” 90 percent of African-American people and 74 percent of Latino people are actually incarcerated¹⁷ – and are legal residents of other parts of the state.

In tandem with the practice of prison-based gerrymandering, these three realities have the effect of diluting the voting strength of communities of color and, conversely, enhancing the voting strength of largely white communities.

Even more, the prison-based gerrymandering practice also limits the access of constituents of color to their elected representatives. For example, if an incarcerated person from Hartford has concerns as a constituent, he or she must undoubtedly look to a legislator representing her pre-arrest home district in Hartford, rather than to the elected official who represents the district where his or her prison cell is located. Thus, the legislators who represent districts in cities like Hartford or New Haven are effectively spread thin, having to respond to the concerns of their constituents who are physically present in their districts *and* those who are incarcerated outside of their district. Accordingly, 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 counting incarcerated individuals at their home communities where they resided pre-arrest, as HB 6679 contemplates, Connecticut will practically and meaningfully equalize the number of constituents in election districts throughout the state, and thus cure the long-standing discriminatory effects of prison-based gerrymandering in the state.

An Opportunity to Lead the Nation in Ending Prison-Based Gerrymandering

The adoption of HB 6679 also provides the Connecticut legislature with the opportunity to join the ranks of leading states that have ended their practice of prison-based gerrymandering and aligned themselves with the democratic principle of one person, one vote. Delaware, New York, Maryland, and California have met this obligation by each enacting legislation that ends prison-based gerrymandering in their states.¹⁸ Notably, in 2012, the United States Supreme

¹⁶ See Prison Policy Initiative, *supra* n. 11.

¹⁷ See *id.*

¹⁸ 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 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

Court affirmed the constitutionality of Maryland's legislation that counts incarcerated people as residents of their last legal home address, rather than of their prison facility address, for redistricting purposes.¹⁹ Several other states, like Massachusetts, Oregon, Rhode Island, and Illinois are considering similar legislation.

Connecticut has, like Maryland, Delaware, New York, and California, the freedom to make a significant impact on how elections work in the state by ensuring that every Connecticut resident has equal power in the political process. As courts have recognized, states have the ability to correct how the Census Bureau counts incarcerated people. There is no law or constitutional requirement that states must rely exclusively on Census data during redistricting.²⁰ In fact, many states and localities commonly use different methods of redistricting other than straight Census numbers.²¹ Until permanent changes are made within the Census Bureau itself, it is up to individual states, like Connecticut, to ensure that they provide for equal representation for *all* of their residents.

Friendly Amendments to Proposed HB 6679

Last, I submit that this Committee should consider a few friendly amendments to proposed HB 6679, notwithstanding my support for the general, noble purpose of this legislation – ending prison-based gerrymandering in Connecticut.

First, this proposed bill should be amended to apply to local governments. That is because prison-based gerrymandering impacts statewide and local redistricting efforts. In fact, 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

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.”); California AB 420 (“...the Legislature hereby requests the Citizens Redistricting Commission to deem each incarcerated person as residing at his or her last known place of residence, rather than at the institution of his or her incarceration, and to utilize the information furnished to it . . . in carrying out its redistricting responsibilities.”)

¹⁹ *Fletcher v. Lamone*, 133 S.Ct.29 (2012).

²⁰ *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.”).

²¹ 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; *see also* “States are Authorized to Adjust Census Data to End Prison-Based Gerrymandering, and Many Already Do,” a fact sheet summarizing the discretion given under federal law to adjust Census data for redistricting purposes and the more than 100 counties that already do this, *available at* <http://www.prisonersofthecensus.org/factsheets/adjusting.pdf> (last visited Mar. 31, 2013).

have a greater skewing effect.²² Not surprisingly, some towns with large prison populations, such as the town of Enfield, have recognized this problem and taken it upon themselves to adjust their population data for redistricting purposes to avoid prison-based gerrymandering.²³ That solution, which works at the local level for places like Enfield, will work equally well for the state as a whole.

Second, this proposed bill should be amended to more accurately provide that “race” and “Hispanic or Latino origin” data be collected in Section (1)(a)(4). These categories would be more consistent with the categories of data currently collected by the Census Bureau.

Conclusion

To be clear, prison-based gerrymandering undermines principles of fair representation and unfairly dilutes the voting strength of communities of color. For these reasons, LDF, the nation’s oldest and premier civil rights law firm, which has long been committed to the full and equal participation of all persons in our democracy, supports HB 6679.

²² As one example, the town of Cheshire 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* (Mar. 31, 2010) available at <http://www.prisonersofthecensus.org/news/2010/03/31/yaleevent/> (last visited Mar. 31, 2013). However, Cheshire also has attempted to avoid prison-based gerrymandering in light of this reality. See list of Local Governments that Avoid Prison-Based Gerrymandering, <http://www.prisonersofthecensus.org/local/> (last visited Mar. 31, 2013).

²³ The city of Enfield, containing two correctional facilities, adjusted 2000 Census data to redistrict. Prison Policy Initiative, *supra* n. 11. Had Enfield not adjusted the data, 30 percent of the third district’s population would have been incarcerated, provided every group of 70 residents near the prison at much political influence as 100 residents elsewhere in Enfield. *Id.*