



Legislative Testimony  
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**Written Testimony Supporting Senate Bill 753, An Act Concerning the Counting of Incarcerated Persons for Purposes of Determining Legislative Districts**

Senator Flexer, Representative Fox, Ranking Members Sampson and Mastrofrancesco, and distinguished members of the Government Administration and Elections Committee:

My name is Kelly McConney Moore, and I am the interim senior policy counsel for the American Civil Liberties Union of Connecticut (ACLU-CT). I am testifying in support of Senate Bill 753, An Act Concerning the Counting of Incarcerated Persons for Purposes of Determining Legislative Districts

As an organization committed to the liberties guaranteed by our Constitution, the ACLU-CT strongly supports a free and fair voting system to uphold the foundational cornerstone of our democracy: the right to vote. The current practice of counting incarcerated Connecticut residents as residents of the towns where they are caged – known as prison gerrymandering – harms incarcerated individuals, dilutes the votes and resources of the communities they come from, and disproportionately benefits communities with prisons. This is a fundamentally undemocratic outcome that requires wholesale change.

The practice of prison gerrymandering hurts incarcerated people in several ways. First, it undermines people's dignity and identities. People should not be counted as residents of the community in which they are incarcerated because they do not decide where they will be imprisoned. They are, in fact, not residents of prisons at all, but captives. To pretend that they are being counted in their communities of choice, as our current system does, is insulting. It also hurts people who are incarcerated because representatives of prison districts know that incarcerated people largely will

return home to other communities.<sup>1</sup> These legislators have no incentive to serve their incarcerated constituents.<sup>2</sup> In addition, incarcerated people are not integrated into the areas surrounding their prisons and jails. They are unable to take advantage of community resources, like libraries, parks, and schools, that were paid for, in part, with their bodies. Prison gerrymandering violates the dignity of people who are incarcerated.

Prison gerrymandering also harms the communities where incarcerated people live. In Connecticut, a disproportionate number of incarcerated people are from the cities of Bridgeport, Hartford, New Haven, Stamford, and Waterbury. While 18% of Connecticut's residents live in these cities, 47% of incarcerated people have their permanent residences there.<sup>3</sup> That 47%, though, are not counted as residents of those towns, because of the practice of prison gerrymandering. This is misleading, since on average, people leave incarceration after 37 months, approximately three years.<sup>4</sup> The short-term nature of incarceration means that most incarcerated people will likely return to the town in which they lived prior to incarceration.

Racist policies in Connecticut have led to wildly disproportionate numbers of Black and Latinx people being imprisoned as compared to white people,<sup>5</sup> meaning that the communities of color these prisoners come from are also harmed far worse by the practice of prison gerrymandering than white communities. How are the home communities of incarcerated people harmed by prison gerrymandering? First, the districts are undercounted in size, since incarcerated people are not included as residents. Because legislative districts must be drawn to be of roughly equal size<sup>6</sup>

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<sup>1</sup> In Connecticut, only 1% percent of incarcerated people have their residences in the state's five largest prison towns. Peter Wagner, "Imported 'Constituents': Incarcerated People and Political Clout in Connecticut." Prison Policy Initiative (Apr. 17, 2013), *available at* <https://www.prisonersofthecensus.org/ct/report2013.html>.

<sup>2</sup> One local legislator in Wisconsin admitted as much, saying "[t]here's no reason to communicate on property I don't have access to." Hansi Lo Wang & Kumari Devarajan, "Your Body Being Used: Where Prisoners Who Can't Vote Fill Voting Districts." NPR Code Switch (Dec. 31, 2019), *available at* <https://www.npr.org/sections/codeswitch/2019/12/31/761932806/your-body-being-used-where-prisoners-who-can-t-vote-fill-voting-districts>.

<sup>3</sup> *Id.*

<sup>4</sup> See Marc Mauer, "Long-Term Sentences: Time to Reconsider the Scale of Punishment." The Sentencing Project (Nov. 5, 2018), *available at* <https://www.sentencingproject.org/publications/long-term-sentences-time-reconsider-scale-punishment/>.

<sup>5</sup> "Prison-Based Gerrymander." NAACP Legal Defense Fund (Feb. 16, 2018), *available at* <https://www.naacpldf.org/case-issue/prison-based-gerrymandering-reform>.

<sup>6</sup> "Redistricting in Connecticut." Ballotpedia, *available at* [https://ballotpedia.org/Redistricting\\_in\\_Connecticut](https://ballotpedia.org/Redistricting_in_Connecticut).

based on official counts, districts which are officially undercounted have people in their district who are not counted. Thus, an undercounted district has more people per district than correctly counted districts. This means that each person in that district has a vote that counts less than the vote of a person in a correctly counted district. In other words, prison gerrymandering serves to dilute the votes of people of color and low-income people.<sup>7</sup> In addition, the populations of areas are used to determine what local, state, and federal resources are provided to those areas. Areas that are undercounted will have more people sharing the same amount of resources that a correctly counted district received.

These unjust losses directly benefit municipalities with prisons. The majority-white towns with the largest prisons in Connecticut<sup>8</sup> are measured as larger than they really are thanks to prison gerrymandering.<sup>9</sup> Fewer voters are included in the district, making each individual vote count more. The practice of gerrymandering represents a direct transfer of political power and resources from communities of color to mostly white areas.<sup>10</sup>

Prison gerrymandering is a serious injustice. Numerous states have worked to end the practice legislatively, including New York, New Jersey, and Maryland.<sup>11</sup> Other states have changed practices through the executive branch<sup>12</sup> or as the result of lawsuits.<sup>13</sup> It is critical to solve this problem now, with redistricting occurring later in the year after the 2020 national decennial Census.<sup>14</sup> The information collected in that Census coupled with information already tracked by the state makes it possible

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<sup>7</sup> "Prison-Based Gerrymander." NAACP Legal Defense Fund (Feb. 16, 2018), *available at* <https://www.naacpldf.org/case-issue/prison-based-gerrymandering-reform>.

<sup>8</sup> Peter Wagner, "Imported 'Constituents': Incarcerated People and Political Clout in Connecticut." Prison Policy Initiative (Apr. 17, 2013), *available at* <https://www.prisonersofthecensus.org/ct/report2013.html>.

<sup>9</sup> See Hansi Lo Wang & Kumari Devarajan, "Your Body Being Used": Where Prisoners Who Can't Vote Fill Voting Districts." NPR Code Switch (Dec. 31, 2019), *available at* <https://www.npr.org/sections/codeswitch/2019/12/31/761932806/your-body-being-used-where-prisoners-who-can-t-vote-fill-voting-districts>.

<sup>10</sup> "Prison-Based Gerrymander." NAACP Legal Defense Fund (Feb. 16, 2018), *available at* <https://www.naacpldf.org/case-issue/prison-based-gerrymandering-reform>.

<sup>11</sup> "Prison Gerrymandering Project: Solutions." Prison Policy Initiative, *available at* <https://www.prisonersofthecensus.org/solutions.html>.

<sup>12</sup> *Id.*

<sup>13</sup> See "Prison Gerrymandering: A Curated Collection of Links." The Marshall Project, *available at* <https://www.themarshallproject.org/records/1982-prison-gerrymandering>.

<sup>14</sup> See Hansi Lo Wang & Kumari Devarajan, "Your Body Being Used": Where Prisoners Who Can't Vote Fill Voting Districts." NPR Code Switch (Dec. 31, 2019), *available at* <https://www.npr.org/sections/codeswitch/2019/12/31/761932806/your-body-being-used-where-prisoners-who-can-t-vote-fill-voting-districts>.

to count incarcerated people in their home districts, not the location where they are incarcerated. If we do not pass this bill this year, Connecticut's districts will be gerrymandered for the next decade. Connecticut should instead join the growing wave of states who are shifting power back to the justice-impacted communities it has been stolen from. This would be a popular move: of 77,887 comments received in response to the Census's prison gerrymandering rule, 77,863 (all but 24) were in favor of counting people at their pre-incarceration address.<sup>15</sup>

In addition to counting incarcerated people as residents of the town in which they lived prior to incarceration, the ACLU-CT encourages the committee to add a provision to this bill to allow incarcerated people to vote. The right to vote is a fundamental part of America's democracy, and the government should not abridge that right lightly. Being able to vote in elections is an incredibly important right that should not be denied to someone simply because they were convicted of a crime and are incarcerated. Indeed, under the national and Connecticut Constitution, prisoners retain their constitutional rights, such as freedom of religion and speech, while incarcerated. Voting should be no different.

Mass incarceration, combined with disenfranchisement laws, subverts participatory democracy, particularly for communities of color. Such communities should not be subjected to the modern version of the three-fifths rule, where their votes count less than others'. Ending the practice of prison gerrymandering and allowing people who are incarcerated to vote are important steps to dismantling these harmful and discriminatory laws. The ACLU-CT strongly supports Senate Bill 753. We urge the committee to add a provision allowing incarcerated people to vote to Senate Bill 753 and support the bill.

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<sup>15</sup> "Final 2020 Census Residence Criteria and Residence Situations." Federal Register (Feb. 8, 2018), *available at* <https://www.federalregister.gov/documents/2018/02/08/2018-02370/final-2020-census-residence-criteria-and-residence-situations>.