

# PRISON POLICY INITIATIVE

Testimony of

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Before the  
**Rhode Island House Committee on State Government and Elections**  
on  
**H 5538**

## **SUPPORT**

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Thank you, Chairperson Shanley and members of the Committee for providing the opportunity to submit testimony in support of House Bill 5538.

I am the Legal Director of the Massachusetts-based Prison Policy Initiative. For nearly two decades, 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 harmful distortion of democracy caused by the Census Bureau's prison count.

Before the Committee today is H 5538, a bill that would correct, within the state of Rhode Island, the harmful effects of a long-standing flaw in the decennial census: tabulating incarcerated people as residents of the wrong location. The Census Bureau's practice of crediting incarcerated people to the census block that contains the prison, rather than the census blocks that contain their home addresses, results in prison gerrymandering: a significant enhancement of representation in districts with prisons, and consequently a dilution of representation for all other residents in all other districts in the state.

As you know in the 2020 redistricting cycle, Rhode Island partially addressed its prison gerrymandering problems. However, unlike other states that have taken action, Rhode Island did not completely end prison gerrymandering. Instead of counting all incarcerated people at home when drawing new districts, the redistricting commission counted only people who, on Census Day (April 1, 2020), were either not yet sentenced or had less than two years remaining on their sentence. As a result, the state's new legislative maps count only 44% of incarcerated people in their correct districts.

By passing H 5538, Rhode Island would finish this work and ensure that the vast majority of Rhode Islanders do not have their representation diluted relative to those who live near the state prison complex in Cranston. H 5538 would allow Rhode Island, a state that exhibits one of the most extreme examples of diluted representation caused by prison gerrymandering, to finally join the national trend towards solving this problem.

### **The problem**

The concentration of all Rhode Island's state prisons into just one location in the state makes the problem of prison gerrymandering in the state's legislative districts more significant than in almost any other state. In most states, prison gerrymandering affords a small number of districts with prisons 1%–5% more political influence than the residential populations of those districts actually warrant. Even in those states with this modest impact, prison gerrymandering is considered a serious ill that is to be avoided.

By contrast, prison gerrymandering is a far larger problem in Rhode Island, where most of the incarcerated people in the state are counted at the ACI in the Census data.

The state's experience during the most recent 2021-2022 round of redistricting shows that the Rhode Island legislature should not rely on adoption of ad-hoc approaches to remedy the systemic problem of the Census Bureau's prison count. The state needs a better approach put into place now before the next redistricting cycle begins.

### **The solution**

By passing H 5538, Rhode Island can follow California, Colorado, Connecticut, Delaware, Illinois, Maine, Maryland, Minnesota, Montana, Nevada, New Jersey, New York, Virginia, and Washington State to end prison gerrymandering by tabulating incarcerated people at home for redistricting purposes. Rhode Island risks falling behind as nearly half of the U.S. population now lives in a place that avoids prison gerrymandering.

By passing H 5538 now, the legislature would allow time to ensure implementation for the next redistricting cycle. Maryland and New York both

passed their respective laws just in time for the 2010 redistricting cycle,<sup>1</sup> and led the nation in successful data adjustment for the 2020 redistricting cycle.<sup>2</sup> States which passed their legislation later in the decade worked under tight deadline pressure to eliminate prison gerrymandering, and while many reached high levels of success, their experience also highlights the advantages of making the adjustments proposed by H 5538 at this point in the decade in order to make the work both easier and more complete in time for the 2030 redistricting.

### **H 5538 is sound policy**

This bill is sound policy that will remedy a significant distortion of Rhode Island democracy. Here we will address concerns that have been raised about this bill, as well as some of the bill's more subtle benefits.

**Funding is not affected.** Both conceptually and explicitly in the precise language of the bill, H 5538 would not affect funding. This bill is state legislation that would require the creation of a new dataset for use in state and local redistricting. This dataset would not affect the distribution of federal or state funds simply because there is no federal or state funding formula that is distributed on the basis of redistricting data. Moreover, Section 17-30-9 of H 5538 makes this prohibition explicit: "The data prepared by the secretary of state as required by § 17-30-4 shall not be used in the distribution of any state or federal aid."

**Both state law and common sense dictate that incarcerated people are residents of their homes, not the ACI.** H 5538 would make the data used for redistricting in Rhode Island consistent with the state's statutory definition of residence:

"A person's residence for voting purposes is his or her fixed and established domicile... A person can have only one domicile, and the domicile shall not be considered lost solely by reason of absence for any of the following reasons: ... Confinement in a correctional facility...."  
(Rhode Island General Laws § 17-1-3.1.)

Consistent with the state's statutory definition, Cranston officials have not considered people incarcerated at the ACI to be residents of Cranston. For

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<sup>1</sup> The laws of both states ending prison gerrymandering were upheld in the courts. New York's law was upheld in state court (*Little v New York State Task Force on Demographic Research and Reapportionment* No. 2310-2011 slip op. (NY Sup Ct. Dec. 1, 2011)) and Maryland's law was affirmed by the U.S. Supreme Court (*Fletcher v. Lamone*, 133 S. Ct. 29, (June 25, 2012, No. 11-1178) affirming F.Supp.2d 887 (D. Md. 2011)). The decisions and documents from both cases are archived at <http://www.prisonersofthecensus.org/fletcher/> and <http://www.prisonersofthecensus.org/little/>. See also Erika Wood, *Implementing Reform: How Maryland & New York Ended Prison Gerrymandering*, Dēmos, August 2014 available at <http://www.demos.org/publication/implementing-reform-how-maryland-new-york-ended-prison-gerrymandering>

<sup>2</sup> The states' results are included in a series of reports *Where People in Prison Come From: The geography of mass incarceration*, 2022 available at <https://www.prisonpolicy.org/origin/>

example, in 2010 when a second-grader whose father was incarcerated at the ACI asked to remain enrolled in the Cranston schools after her mother moved back to Providence, Mayor Allan Fung declared that the little girl could not take advantage of the Rhode Island law that allows parents who live in two different school districts to decide in which school district to enroll their child. As Mayor Fung correctly told WPRI, the student's incarcerated father was not actually a resident of Cranston:

"This individual is not a taxpayer to the city of Cranston, he's in a situation where he's incarcerated."<sup>3</sup>

**While the ACI may look permanent, the individuals who are inappropriately tabulated there are quite transient.** We've occasionally heard the argument that it makes sense to count incarcerated people as residents of the ACI because they will be incarcerated there for a long time. This is factually incorrect for both of the two major groups of people who are confined at the facility:

- Pretrial detainees (those attempting to make bail or held until trial), who on any given day comprise a quarter of the total number of people incarcerated at the ACI, have a median length of stay of only three days.<sup>4</sup>
- People who have been convicted and are serving sentences. The average sentence imposed on a person sent to the ACI is less than two years and, as the DOC notes, "[t]he actual amount of time offenders stay in prison is almost always shorter than the full sentence imposed, due to factors such as statutory good time (i.e., credit earned for good or industrious behavior) and earned time for program participation and completion (time deducted from sentence)."<sup>5</sup>

From the outside, the ACI may look permanent, but the individuals confined there are in fact there only temporarily.

**Cheating at the redistricting table is not an appropriate way to address any perceived shortcomings in the state PILOT formula.** Over the years, we have heard a bizarre proposition repeated: that the extra political clout gleaned from prison gerrymandering is justified by alleged unreimbursed costs that Cranston bears because it contains the prison complex.

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<sup>3</sup> See Sara Mayeux's summary of the dispute on the Prison Gerrymandering blog at <http://www.prisonersofthecensus.org/news/2010/03/31/rimayo/>. Many of the news articles that Ms. Mayeux cites are no longer online, but the Prison Policy Initiative would be happy to share our archived copies on request.

<sup>4</sup> See Rhode Island Department of Corrections Planning & Research Unit, Fiscal Year 2013 Annual Population Report, p. 15, at <http://www.doc.ri.gov/administration/planning/docs/FY13%20Annual%20Report.pdf>. The *average* pre-trial length is somewhat higher, 24 days, because of the longer time spent behind bars by the very small number of people who do not receive bail. Finally, it is worth noting that the total population of the ACI is actually declining. As the DOC notes on page 9: "since FY08 the population has seen a steady decline and fell 18% in the past five years."

<sup>5</sup> *Ibid.*, page 17.

The opponents' argument is essentially that Cranston is secretly subsidizing the prison complex because the state is not properly reimbursing the city for municipal services. This claim is contradictory to our experience on economic development and related issues in other states, and we have seen such claims disproved in Rhode Island. But even if it were true that, for example, city ambulances are providing services to the prison that are not being properly reimbursed, the cost of those services should be quantified and immediately brought to the attention of both the Department of Corrections and the legislature for consideration during the next revisions to the PILOT formula. However, regardless of whether or not Cranston is due additional compensation, the appropriate response to a financial loss is compensation in kind, not claiming extra political clout during redistricting.

**Many people confined at the ACI are allowed to vote, but they are barred from voting in Districts 15, 17 or 20.** Over 800 people confined at the ACI are in fact allowed to vote because they are awaiting trial or because their sentence is for a misdemeanor. (Only felony convictions result in disenfranchisement.) However, Rhode Island General Laws § 17-1-3.1 (the residence law statute discussed above) prohibits these 800 potential voters from claiming the ACI as a residence. If they wish to vote, they must vote via absentee ballot as residents of their home districts.

#### **H 5538 would finish the work the state started when drawing the current district lines**

All told, roughly half of all U.S. residents now live in a state, county, or municipality that has rejected prison gerrymandering. Rhode Island made partial progress toward granting its residents the same access to equal representation during the last redistricting cycle. The redistricting commission took the important first step of adjusting redistricting data to reflect people at their home addresses if they were expected to return home by the time the district lines were in effect. By counting some of its incarcerated residents at home in the redistricting data, the state blunted the impact that prison gerrymandering has on all of its residents. This bill would create a process to standardize the data adjustment and expand the effort to include all of the residents incarcerated by the state.

#### **Conclusion**

We urge you to pass H 5538 in order to enact a permanent state-based solution to the problem of prison gerrymandering in Rhode Island. Please do not hesitate to contact me with any questions or for additional resources on the successful implementation of the comparable laws in over a dozen states. Thank you for your work to ensure equal representation for all Rhode Island residents.



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