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Representative Robert Phillips, Co-Chair

Senator Stephen Archambault, Co-Chair

Special Commission on Reapportionment

1 Capitol Hill, Room 35

Providence, RI 02903

Chairmen Phillips and Archambault and Honorable Members of the Commission:

On behalf of the Mayor and the administration of the City of Cranston, I thank you for all of the time and effort that this commission has dedicated thus far to the Redistricting efforts required every ten (10) years by R.I.G.L. That being said, the City of Cranston would offer this opinion as it pertains to the current discussion on prison gerrymandering and population count.

The Reapportionment Commission ("Commission") does not have the authority under its enabling statute to recommend a reapportionment plan which reallocates or exclude prison inmates. Furthermore, a reapportionment plan that reallocates or excludes prison inmates could violate the U.S. Constitution or the Rhode Island Constitution.

The Commission does not have authority under its enabling statute to recommend a reapportionment plan that reallocates or excludes prison inmates. In its enabling statute, "the purpose and responsibility" of the Reapportionment Commission is to "draft and to report to the General Assembly an act to reapportion the districts of the General Assembly and the state's United States Congressional districts ... subject to the final 2020 census data provided by the United States Census Bureau."<sup>1</sup> The enabling statute does not state the Commission can draft reapportionment legislation subject to the final 2020 census data provided by the United States Census Bureau and the Department of Corrections. The enabling statute does not state that the draft reapportionment legislation subject to the final 2020 census data provided by the United States Census Bureau can be adjusted, or modified by the Reapportionment Commission.

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<sup>1</sup> 2021 P.L. c. 176, and 177, Section 1(b).

Also, the enabling statute requires congressional and state legislative districts to only vary in population by a certain percentage “as determined by the population reported in the federal census in 2020.”<sup>2</sup> The enabling statute does not state districts can vary in population as determined by the population reported in the federal census in 2020, subject to changes by the Reapportionment Commission. Therefore, any reapportionment plan the Reapportionment Commission submits to General Assembly must be based only on the “final 2020 census data provided by the United States Census Bureau” and the population of the districts must be “determined by the population reported in the federal census in 2020,” otherwise the Reapportionment Commission has exceeded its statutory authority.

Even if the Reapportionment Commission had the statutory authority to recommend a reapportionment plan, which departs from the U.S. Census in regards to prison inmates, such a plan, if adopted by the General Assembly, could violate either the U.S. Constitution or Rhode Island Constitution. First, reapportionment plans are based on U.S. census data because it is reliable. The U.S. Supreme Court has determined that “the census data provide the only reliable — albeit less than perfect — indication of the districts’ “real” relative population levels.” Karcher v. Daggett, 462 U.S. 725, 738 (1983). Furthermore, the U.S. Supreme Court has declared: “If a State does attempt ... to ‘correct’ the census figures, it may not do so in a haphazard, inconsistent, or conjectural manner.” Id., at 732, n. 4. Here the Reapportionment Commission is being asked to draft a plan that reallocates prison inmates in a “conjectural manner.” The Commission knows that the data it has for the pre-incarceration addresses of prison inmates is unreliable. The R.I. Department of Corrections has stated: “There is no confirmation data to show if that is in fact a legal address, a relative or friend’s address, a part time address or simply a mailing address.”<sup>3</sup> Further evidence of the unreliable nature of the data for pre-incarceration addresses of prison inmates is the fact 74 percent of parolees provided a home address that differs from their pre-incarceration address.<sup>4</sup> Deviating from the U.S. Census by reallocating prison inmates based on unreliable pre-incarceration address data amounts to conjecture and would violate the U.S. Constitution.

Second, a reapportionment plan which treats the prison inmates in Cranston differently than the prison inmates located at the Wyatt Detention Center in Central Falls would violate the U.S. Constitution’s Equal Protection Clause. When the federal courts upheld a Maryland redistricting plan which counted prison inmates at their last known residence before incarceration it did so because the “adjustments” to the census data was “applied in a nonarbitrary fashion.” Fletcher v. Lamone, 831 F.Supp.2d 887, 894 (D. Md. 2011). The Maryland state law reallocating prison inmates applied to “individuals incarcerated in the State or federal correctional facilities.” Md. Code Ann., State Gov’t § 2-2A-01. Here the Reapportionment Commission is being asked to draft a redistricting plan, which treats prison inmates located in Cranston one way and prison inmates located in Central Falls another way. This is arbitrary approach to redistricting likely violates the U.S. Constitution.

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<sup>2</sup> 2021 P.L. c. 176, and 177, Section 2(c) (1) and (2).

<sup>3</sup> Declaration of Kimball W. Brace, para. 34 (quoting the R.I. Department of Corrections), Davidson v. City of Cranston, 837 F.3d 135 (1st Cir. 2016), Kimball Brace, Power Point Presentation, at 13 (11/15/21)

<sup>4</sup> Kimball Brace, Power Point Presentation, at 3 (12/6/21)