

January 5, 2022

Submitted by email

Special Commission on Reapportionment
Rhode Island General Assembly
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**Re: Supplemental Comments on Ending Prison-Based
Gerrymandering in Rhode Island**

Chair Archambault, Chair Phillips, and Members of the Special Commission on Reapportionment:

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”) writes to supplement our letter of November 12, 2021, to the Special Commission on Reapportionment (“Commission”)¹ regarding the need to end prison-based gerrymandering in Rhode Island’s legislative maps. We write again to specifically address the importance of reallocating incarcerated persons serving long prison sentences to their home communities. In recent meetings, some members of this body have discussed excluding people serving sentences of ten years or longer from those who would be reallocated to their home communities for purposes of redistricting.

As we explained in our previous correspondence, reallocating any number of incarcerated people to their home addresses would be a substantial improvement over the status quo—any correction to an unjust system is better than no correction.² However, we urge the Commission to reallocate *all* incarcerated people who can be reallocated—regardless of sentence length or parole eligibility—as an appropriate response to prison-based gerrymandering’s discriminatory

¹ NAACP Legal Def. and Educ. Fund, Inc., Letter to R.I. Special Comm’n on Reapportionment (Nov. 12, 2021), <https://www.naacpldf.org/wp-content/uploads/LDF-Letter-to-RI-Reapportionment-Commission-re-Prison-Based-Gerrymandering-11-12-21.pdf>.

² See, e.g., *Fletcher v. Lamone*, 831 F. Supp. 2d 887, 897 (D. Md. 2011) (three-judge panel), *summarily aff’d*, 567 U.S. 930 (2012) (responding to the argument that some incarcerated people do not return to their pre-incarceration home addresses by observing that “it would certainly be true that at least some prisoners will return to their old communities,” and, “[b]ecause some correction is better than no correction, the State’s adjusted data will likewise be more accurate than the information contained in the initial census reports, which does not take prisoners’ community ties into account at all”); Erica Wood, *Implementing Reform: How Maryland & New York Ended Prison Gerrymandering*, (Aug. 2014), <https://www.demos.org/sites/default/files/publications/implementingreform.pdf> (“New York State’s reallocation, while imperfect, was a marked step forward compared to the previous decade when all incarcerated people were allocated to the correctional facility where they were incarcerated on April 1 of the census year.”).

and anti-democratic harms, and not to needlessly exclude people serving long prison sentences.

First, because of racial disparities in sentencing,³ failing to reallocate people who are serving long sentences, or who are ineligible for parole, would fail to address the full scope of prison-based gerrymandering’s racially discriminatory impact, to the detriment of Black and Latino Rhode Islanders and their home communities. Again, a partial remedy is better than no remedy, and some reallocation is better than none—but reallocating everyone who can be reallocated would be the most equitable approach. Sentencing disparities are part of the reason why. Studies, surveys, and meta-analyses confirm that Black and Latino people generally face longer prison sentences than similarly situated white people.⁴ As a result, a remedy that applied only to people serving shorter sentences, or only those eligible for parole, would leave out a disproportionate number of Black and Latino Rhode Islanders.

In Rhode Island, Black and Latino people are overrepresented among the incarcerated population generally, and Black people are even more

³ See, e.g., The Sentencing Project, *Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System*, (Apr. 19, 2018), <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/> (“African Americans are more likely than white Americans to be arrested; once arrested, they are more likely to be convicted; and once convicted, and they are more likely to experience lengthy prison sentences.”); *id.* (discussing average “imprisonment rates for African-American and Hispanic adults that are 5.9 and 3.1 times the rate for white adults, respectively—and at far higher levels in some states”); *Written Submission of the American Civil Liberties Union on Racial Disparities in Sentencing*, Hearing on Reports of Racism in the Justice System of the United States, Inter-American Comm’n on Human Rights (Oct. 27, 2014), https://www.aclu.org/sites/default/files/assets/141027_iachr_racial_disparities_aclu_submission_0.pdf (citing racial disparities at each stage of the criminal justice system that result in Black and Latino people serving longer terms of incarceration).

⁴ See, e.g., Ojmarrh Mitchell & Doris L. MacKenzie, *The Relationship between Race, Ethnicity, and Sentencing Outcomes: A Meta-Analysis of Sentencing Research* 125, 128 (Dec. 2004), <https://www.ojp.gov/pdffiles1/nij/grants/208129.pdf> (concluding, based on a meta-analysis of 184 academic studies on the relationship between race and ethnicity and sentencing, “that African-Americans sentenced in State courts are generally punished more harshly than whites, independent of offense seriousness and prior criminal history,” and, based on analyses of available studies, “that Latinos in both State and Federal courts generally were [also] sentenced more harshly than whites”); U.S. Sentencing Comm’n, *Demographic Differences in Sentencing: An Update to the 2012 Booker Report* 2, 8 (Nov. 2017), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114_Demographics.pdf (reporting that Black men convicted of federal crimes receive prison sentences that are on average more than 19.1% longer than white men convicted of the same crimes, while, during the most recent period studied, Latino men convicted of federal crimes received sentences that are on average 5.3% longer than white men convicted of the same crimes); Susan Nembhard & Lily Robin, *Racial and Ethnic Disparities throughout the Criminal Legal System* 6, Urban Institute (Aug. 2021), <https://www.urban.org/sites/default/files/publication/104687/racial-and-ethnic-disparities-throughout-the-criminal-legal-system.pdf> (reporting that Black incarcerated people wait longer for parole than white incarcerated people and that Black and Latino incarcerated people a higher likelihood of having their parole applications rejected than white incarcerated people).

overrepresented among the subset of incarcerated people who are serving life, life without parole, or lengthy “virtual life” sentences at the Adult Correctional Institutions (“ACI”). Black people are less than one tenth (9.1%) of Rhode Island’s total population.⁵ However, Black people are more than one fourth (29.8%) of the ACI’s sentenced population⁶ and more than one third (33.9%) of those serving life, life without parole, or virtual life sentences.⁷ Reflecting a similar disparity, Latino people are less than one sixth (16.6%) of Rhode Island’s total population; yet they are more than one fourth (25.8%) of the ACI’s sentenced population and more than one fifth (21.5%) of those serving life, life without parole, or virtual life sentences.⁸

Thus, the Commission should not differentiate based on sentence length or parole eligibility when developing a remedy to prison-based gerrymandering. Doing so would fail to address a significant way in which the effects of racially unjust sentencing practices extend into the political sphere. Instead, the Commission should reallocate every incarcerated person who can be reallocated to a pre-incarceration home address, whatever their term of incarceration may be.

Second, the Rhode Island statute on electoral residence that applies to incarcerated people does not distinguish between people serving short sentences and people serving long sentences. Under Rhode Island law, “[a] person’s residence for voting purposes is his or her fixed and established domicile,” and such a domicile “shall not be considered lost solely by reason of absence” due to “[c]onfinement in a correctional facility[.]”⁹ Simply put, incarceration—whether for one day or for life—is legally insufficient to establish or revoke a person’s electoral residency. This is consistent with traditional definitions of domicile, which depend on voluntary intent to remain in a location. The Commission should be guided by these principles in fashioning a potential remedy.

Third, no duration of time in a correctional facility could make a person a functional or practical resident of the city where the prison is located. Even people serving life sentences cannot use their prison address to enroll their children in Cranston’s public schools.¹⁰ They cannot attend public or private events in Cranston, form community ties, or speak at candidate forums, and, since a

⁵ Election Data Services, Inc., *Rhode Island Racial Percentages*, https://www.riredistricting.org/wp-content/uploads/2021/09/RI_Statewide_Racial_Percentages.pdf (last visited Jan. 3, 2022).

⁶ R.I. Dep’t of Corrections, *Fiscal Year 2020 Annual Population Report* 13 (Sept. 2020), <http://www.doc.ri.gov/docs/FY20%20Annual%20Population%20Report.pdf>.

⁷ The Sentencing Project, *Still Life: America’s Increasing Use of Life and Long-Term Sentences* 15 (2017), <https://www.sentencingproject.org/wp-content/uploads/2017/05/Still-Life.pdf>.

⁸ See sources cited *supra*, notes 5-7.

⁹ R.I. Gen. Laws § 17-1-3.1(a).

¹⁰ See *Davidson v. City of Cranston*, 188 F. Supp. 3d 146, 147 (D.R.I.), *rev’d on other grounds sub nom. Davidson v. City of Cranston, Rhode Island*, 837 F.3d 135 (1st Cir. 2016).

life sentence is invariably a felony sentence, they cannot vote.¹¹ By contrast, home remains home—families, loved ones, and other sources of support remain in people’s home communities, not the community surrounding the prison.

Fourth, differentiating between long and short sentences would ignore the electoral and representational harms that prison-based gerrymandering causes to incarcerated people’s family members. Maps distorted by prison-based gerrymandering especially diminish the political power of communities where many incarcerated people’s families live. Longer sentences only compound these harms. Children of incarcerated people—who, in Rhode Island, are mostly Black or Latino and disproportionately live in Providence—already face higher rates of physical and mental health challenges, academic discipline issues, economic hardship, and other disadvantages.¹² Prison-based gerrymandering visits a further injury on these families’ voting and representational rights. As one family member of an incarcerated person recently explained, when Rhode Islanders are imprisoned, family members on the outside “are their voice.”¹³ Yet prison-based gerrymandering stifles these voices by eroding the political influence of the communities where incarcerated peoples’ families live.

Fifth, reallocating only those who are serving shorter sentences would be inconsistent with the practice of other states that have implemented reforms to mitigate or abolish prison-based gerrymandering. None of those 13 states excludes individuals serving 10-year sentences, and only two states exclude individuals who are serving sentences of life or life without the possibility of

¹¹ *Id.*; see also Sanya Mansoor & Madeleine Carlisle, *When Your Body Counts But Your Vote Does Not: How Prison Gerrymandering Distorts Political Representation*, TIME (July 1, 2021), <https://time.com/6077245/prison-gerrymandering-political-representation/> (Floyd Wilson, a Pennsylvanian who has been incarcerated since 1976, explaining that he has never had the right to vote in prison and that “while he’s repeatedly tried to have their state representatives come and speak, he’s had little success”); Sam Metz, *‘Prison gerrymandering’ endures in Nevada, despite law*, ABC News (Oct. 30, 2021), <https://abcnews.go.com/Politics/wireStory/prison-gerrymandering-endures-nevada-law-80874658> (quoting a Nevada state representative who “do[es]n’t go in to campaign in the prisons” that are located within his district “because it really doesn’t have an impact on the electorate”).

¹² R.I. Kids Count, *2021 Rhode Island KIDS COUNT Factbook* 102-03 (2021), https://www.rikidscount.org/Portals/0/Uploads/Documents/Factbook%202021/fm6781_Factbook2021web.pdf?ver=2021-05-14-103207-510; The Sentencing Project, *Parents in Prison* 1 (Nov. 17, 2021), <https://www.sentencingproject.org/wp-content/uploads/2021/11/Parents-in-Prison.pdf>.

¹³ Steve Ahlquist, *Family members of incarcerated people rally to demand correctional officer accountability* (Apr. 10, 2021), <https://upriseri.com/stop-torture-in-ri-prisons/>.

parole.¹⁴ The remaining 11 states make no differentiation based on sentence length or parole eligibility.¹⁵

For all these reasons, we once again urge this Commission to end prison-based gerrymandering in Rhode Island's legislative districts by reallocating as many incarcerated people as possible to their pre-incarceration home addresses during the present redistricting cycle. We further urge the Commission to address the full scope of the harm by fashioning a remedy that does not needlessly exclude any incarcerated person from reallocation based on sentence length or parole eligibility, particularly because of the racial discrimination that that decision would perpetuate.

Thank you for your consideration of an equitable solution to prison-based gerrymandering in Rhode Island. Please feel free to contact Steven Lance at slance@naacpldf.org with any questions or to discuss these matters further.

Sincerely,

/s/ Steven Lance

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¹⁴ Nat'l Conf. of State Legislatures, *Reallocating Inmate Data for Redistricting* (Dec. 14, 2021), <https://www.ncsl.org/research/redistricting/reallocating-incarcerated-persons-for-redistricting.aspx> (reporting that only Connecticut and Pennsylvania differentiate between people who are serving life imprisonment and other incarcerated people for redistricting purposes, while California, Colorado, Delaware, Illinois, Maryland, Montana, Nevada, New Jersey, New York, Virginia, and Washington do not).

¹⁵ *Id.*