December 20, 2021

Dear Members of the Special Commission on Reapportionment:

In light of the commentary provided at last Thursday's commission meeting by Mr. Brace and a representative of Cranston's Mayoral administration on the issue of prison gerrymandering, we wanted to formally reiterate and expand upon the response the ACLU provided at the meeting by addressing a few key points.

Before doing so, however, we want to reiterate our appreciation for the continued discussions that have been taking place among Commission members about prison gerrymandering. We are pleased that this critical issue of electoral fairness is being given the serious consideration it deserves. But that discussion will have largely been for naught if the commission postpones action on the issue for another decade. In that regard, we offer brief responses to four objections that were articulated at this last meeting (and previous ones).

1. The Commission's authority to act: Cranston officials re-raised earlier criticisms made by supporters of prison gerrymandering that the commission has no authority to rectify this problem. Rather than provide another detailed rebuttal to that argument here, we have attached a copy of a letter we sent you on November 10th. As we believe that letter makes abundantly clear, the enabling act establishing this commission, including its requirement that line-drawing "be subject to the final 2020 census data provided by the United States Census Bureau," imposes no impediment whatsoever to commission action addressing prison gerrymandering. We urge you to reject those arguments.

2. The constitutionality of addressing prison gerrymandering: Cranston's other major argument was that a First Circuit federal court of appeals decision, *Davidson v. City of Cranston*, holds that any attempt to address prison gerrymandering would be unconstitutional. Nothing could be further from the truth. As Steven Brown noted in his verbal testimony, that case dealt with the question of whether the Constitution *required* the City of Cranston to draw district lines to address the impact of prison gerrymandering, not whether it *had the authority* to do so if it so chose. The First Circuit's decision makes the point crystal-clear that, while not constitutionally required, addressing prison gerrymandering is constitutionally allowable:

> "Plaintiffs' analysis invites federal courts to engage in what have long been recognized as paradigmatically political decisions, best left to local officials, about the inclusion of various categories of residents in the apportionment process. We decline that invitation. *The decision whether to include or exclude the ACI prisoners in Cranston's apportionment is one for the political process*." *Davidson v. City of Cranston*, 837 F.3d 135, 144 (1st Cir. 2016) (emphasis added).

The fact that a dozen states and hundreds of municipalities have drawn lines to redress this problem, and have done so without any court decision finding it unconstitutional to do so, is further ample rebuttal to the City's baseless claim.[1]

3. Examining prospectively the residence address of people leaving the ACI: As Steven Brown noted, no other state or municipality that has addressed prison gerrymandering has engaged in the perplexing and complicated effort to find out where incarcerated individuals return to once they leave prison. There is no rational basis for Rhode Island to do so either. While Mr. Brace has noted that when the new district lines finally get approved, two years will have passed since the collection of the census data, that is immaterial. That some people at the ACI who have been released in that period of time may end up residing somewhere other than their previous residence is undoubtedly true, but also completely irrelevant. The census looks to where people were living, or deemed to be living, on April 1, 2020, not where they might be living a week, a month, two years, or twenty years from then, regardless of whether they have ever seen the inside of a prison.

Even with what the Census Bureau called a "historically low" moving rate, in 2020 "about 29.8 million people reported living at a different residence one year ago," a number which is about 9.3% of the country's population.[2] Yet these figures documenting America's mobile society play no role when it comes to redistricting. Further, as Sen. Metts pointed out, state law already answers the question of how the incarcerated are treated for voting purposes: A person's "residence for voting purposes … shall not be considered lost solely by reason of absence [due to] . . . [c]onfinement in a correctional facility."[3]

4. Reallocating only people who are serving sentences of less than ten years: Some commission members discussed a "compromise" approach of breaking up the ACI population for prison gerrymandering purposes by reallocating to the community people serving sentences of less than ten years, while continuing to count all others as residents of the ACI. Leaving aside the undeniable fact that a fair number of individuals serving 10-year-plus sentences may nonetheless be eligible for release before the lapse of a decade, we believe it is still inappropriate to fail to count them at the residence from which they came. This is so for at least two reasons.

First, these individuals are not treated as Cranston residents by the City for any other meaningful purpose. As the federal district court noted in the *Davidson* case, ACI detainees and prisoners, whatever the length of their sentence, do not get to participate in Cranston's civic life in any way; they are denied the right to send their children to Cranston schools based on their ACI address,[4] something that should be allowed if they truly were city residents; and Cranston's elected officials do not campaign or endeavor to represent their purported ACI "constituents."[5]

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[1] In fact, a decade ago, the U.S. Supreme Court affirmed a lower court ruling that upheld Maryland's law addressing prison gerrymandering, *Fletcher v. Lamone*, 831 F.Supp. 2d 887 (D.Md. 2011), aff'd without opinion, 567 U.S. 930 (2012). *See also Calvin v. Jefferson Cty. Board of Commissioners*, 172 F.Supp.3d 1292 (N.D. Fla. 2016) (same)

[2] "Census Bureau Releases 2020 CPS ASEC Geographic Mobility Data," December 15, 2020. https://www.census.gov/newsroom/press-releases/2020/cps-asec-geographic-mobility.html

[3] R.I.G.L. § 13-1-3.1(a)(2).

[4] "Rhode Island Mayor: Prisoners count as residents when it helps me, not when it helps them," by Sarah Mayeux, March 31, 2010. https://www.prisonersofthecensus.org/news/2010/03/31/rimayo/

[5] *Davidson v. City of Cranston*, 188 F.Supp.3d 146, 147-148 (D.R.I. 2016), reversed on other grounds, 837 F.3d 135 (1st Cir. 2016).

It is also crucial to remember that efforts to address prison gerrymandering seek to counter two evils: the under-representation of communities from where people at the ACI have come, and the *over-representation* of the communities where prisons are located. By continuing to count hundreds of incarcerated individuals as residents of the ACI, the Cranston districts encompassing the prison facilities will also continue to have inappropriately greater electoral power than all other districts in the state, as they will be representing a much smaller base of residents. It is perhaps for this reason that only one other state – Pennsylvania – has sought to address prison gerrymandering with this hybrid approach. We firmly believe that Rhode Island should not be the second, as it undermines one of the key goals of the effort to undo the harmful impact of prison gerrymandering.

For all these reasons, we once again respectfully, but fervently, request that you take the step of abolishing ACI prison gerrymandering now, and before another decade goes by. The reallocation will not be perfect, but it will be a significant start, and one that is actually better than those of some other states engaging in this process.

We thank you in advance for considering these latest comments, and we remain available to answer any questions you have.

Sincerely,

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Enclosure

ACLU AMERICAN CIVIL LIBERTIES UNION Rhode Island

Common Cause Rhode Island

PRISON POLICY INITIATIVE

November 10, 2021

Dear Members of the Special Commission on Reapportionment:

At the Commission's most recent meeting, a question was raised as to whether your body has the authority to address the issue of prison gerrymandering, an issue that has, as you know, been the subject of much discussion in the community and at your meetings. Because we believe it is abundantly clear that the Commission does have such authority, we are writing to urge you to forge ahead and correct this problem in drawing district lines.

We will not repeat the many substantive reasons our organizations have previously provided you in written and verbal testimony for addressing prison gerrymandering, but instead we focus this letter on the jurisdictional issue.

First, the Act gives the Commission broad authority to "perform the necessary functions incident to drafting" legislation redrawing district lines.[6] The stated key function of the Commission is to divide the state into legislative districts "as near equal as possible." Taking into account prison gerrymandering for purposes of drawing district lines "equally" fits comfortably within that authority.

The Act also requires that the drawing of lines "be subject to the final 2020 census data provided by the United States Census Bureau."[7] While the Census Bureau itself counted prisoners at their housed correctional facility, the Bureau's data specifically envisions states reallocating people in order to address prison gerrymandering (and similar issues). Table 5 in the official PL 94-171 redistricting data product from the Census Bureau contains "group quarters" population counts to accommodate this goal, and the Bureau has specifically offered state redistricting officials special access to its geocoding (mapping) services for *the express purpose* of mapping incarcerated people's addresses for reallocation.[8] Thus, the reallocation of prisoners to their home communities is perfectly consistent with using "the final 2020 census data provided by the United States Census Bureau."

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[6] P.L. 2021, ch. 177, § 1(b).

[7] P.L. 2021, ch. 177, §§ 1(b), 2(c)(3).

[8] "[T]he Census Bureau recognizes that some states have decided, or may decide in the future, to 'move' their group quarters (GQ) population (e.g. student, military, and prisoner population) to an alternate address for the purpose of redistricting. To assist those states with their goals of reallocating GQ population for legislative redistricting, the Census Bureau is offering the use of a geocoding service based on 2020 Census geographic data." https://www.census.gov/programs-surveys/decennial-census/about/rdo/summary-files/2020/GQAssistance_CensusGeocoder.html

Finally, there is simply no argument to be made that the Commission would somehow be improperly exercising legislative authority in performing this reallocation. The Commission has no authority to enact legislation; rather its purpose and responsibility is "to draft and to report to the general assembly" a proposed bill to reapportion the state's districts.[9] The Commission's power ends with "report[ing] its findings *and recommendations*" to the General Assembly.[10] It is thus no different from any other legislative commission given the power to examine an issue and suggest legislation to address it. The General Assembly remains free to accept or reject that reallocation.

For all these reasons, we urge the Commission to confirm its authority to address the critical problem of prison gerrymandering and to favorably act on that authority. Thank you in advance for considering our views.

Sincerely,

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[9] P.L. 2021, ch. 177, § 1(b).
[10] P.L. 2021, ch. 177, § 4 (emphasis added).