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September 9, 2021

Dear Members of the Special Commission on Reapportionment:

You recently received a letter from more than 20 organizations congratulating you on your appointment to this important commission and offering a series of recommendations designed to ensure that the state's redistricting process is fair and transparent. As a signatory to that letter, the ACLU of Rhode Island fully supports all those recommendations, and we hope they will be given your careful and favorable attention.

The purpose of this letter is simply to emphasize one of the recommendations contained in the letter, and that is to urge the commission to address the critical issue of prison-based gerrymandering before another decade goes by. As that earlier letter to you noted, Pennsylvania's redistricting commission just voted to address this issue in its plans, and it is past time for Rhode Island to follow suit.

As we have noted in supporting independent legislation that has been submitted for a number of years to address this particular problem, the current system, which counts all ACI inmates as living at the prison facility instead of where they previously resided (and where state law requires they vote from if eligible), is arbitrary and unfair and diminishes the legitimate representation of other districts, particularly in the state's urban communities.

For geographical reasons, it is an especially critical issue in Rhode Island, because a failure to address it places our state far outside the mainstream when it comes to prison-related malapportionment. Following the lead of eleven other states and more than two hundred local governments across the country, we therefore urge the commission to count incarcerated people's last home residence for redistricting purposes, rather than counting them as "residing" at the ACI.

As additional background, I have attached a copy of the testimony we submitted this year on the legislation that addressed this particular issue.

Thank you in advance for your consideration of our views.

Sincerely,

A handwritten signature in black ink that reads "Steven Brown". The signature is written in a cursive, flowing style.

Steven Brown
Executive Director



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ACLU OF RI POSITION: SUPPORT

TESTIMONY IN SUPPORT OF 21-H 5285 - RELATING TO STATE AFFAIRS AND GOVERNMENT March 1, 2021

The right to vote is the quintessential right underlying the democratic process, and malapportioned districts or the failure to provide appropriate voting strength to racial minorities raise fundamental civil liberties concerns. This legislation would positively address an issue bearing directly on that problem, and for that reason we strongly support this bill.

The issue is that of prison-based gerrymandering. For geographical reasons, it is an especially critical issue in Rhode Island, because a failure to address it places our state far outside the mainstream when it comes to prison-related malapportionment. Following the lead of a handful of other states and more than two hundred local governments across the country, this bill would count incarcerated people's last home residence for redistricting purposes, rather than counting them as "residing" at the ACI.

Rhode Island currently gives extra representation at both the state and municipal level to the people who live near the ACI. That is because reapportionments have relied on U.S. Census data that counts people in prison as if they were all residents of Howard Avenue in Cranston. The Supreme Court's "one person-one vote" rule requires legislative districts to be redrawn each decade so that each district contains the same population and each resident is therefore given the same access to government. But this process fails when an underlying premise, such as the one involving the residency status of Rhode Island's prison population, is faulty. The resulting redistricting with skewed district populations is often referred to as prison gerrymandering. The impact is that the voting strength of the communities from which the inmates come - often poor urban areas - is diluted, while the political influence of the municipal residents in which the prison is located is inflated.

Under the redistricting plan adopted in 2012, 25 percent of Cranston's City Council Ward 6 is comprised of prisoners. Although Ward 6 has only 10,209 true constituents, those constituents wield the same political power as 13,300 constituents in each of the other wards. One-quarter of the residents of Ward 6 - many of whom retain their voting rights during their incarceration - are counted as if they are represented by people for whom they cannot not vote.

The allocation of all prisoners to Cranston for redistricting purposes is particularly problematic and flawed because that premise is in direct conflict with state voting law, which explicitly provides that incarceration does not change a person's 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..."

Thus, even though inmates at the ACI are counted as residents of Cranston for redistricting purposes, they are statutorily denied the right to vote from there even if they want to. This inconsistency is unconscionable. However, because the U.S. Court of Appeals for the First Circuit Court of Appeals has held that any remedy for this must be statutory rather than judicial, it is crucial for the General Assembly to step in.

The need for remedying this problem in Rhode Island is heightened by our state's special status. We believe we may be the only state with just one prison complex. This fact combines negatively with the fact that Rhode Island legislative districts are smaller by population than in most states. According to Peter Wagner, Executive Director of the Prison Policy Initiative and the national expert on prison populations and redistricting, Rhode Island currently provides one of the most dramatic examples of how prison populations distort representation.

We urge this Committee to follow the example of ten other states - including New York, New Jersey, Virginia, Maryland, and Delaware - that have taken action to end prison-based gerrymandering, by approving this legislation.

Submitted by: Steven Brown, Executive Director