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

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

[3] "[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.[4] The Commission's power ends with "report[ing] its findings *and recommendations*" to the General Assembly.[5] 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,

Steven Brown, Executive Director
American Civil Liberties Union of Rhode Island
128 Dorrance Street, Suite 400 - Providence, RI 02903 - sbrown@riaclu.org

John Marion, Executive Director
Common Cause Rhode Island
245 Waterman St., Suite 400A - Providence, RI 02906 - john_marion@commoncauseri.org

Aleks Kajstura, Legal Director
Prison Policy Initiative
69 Garfield Ave Floor 1 - Easthampton, MA 01027 - akajstura@prisonpolicy.org

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