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Testimony of Peter Wagner, Executive Director, Prison Policy Initiative

Before the Connecticut General Assembly Reapportionment Committee
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Thank you, Speaker Donovan, Senator McKinney, Senator Williams, Representative Cafero and members of the Committee for providing the opportunity for testimony here today. I am an attorney and the Executive Director of the Prison Policy Initiative, a national, non-profit, non-partisan research and policy organization, established in 2001, with an office in Easthampton Massachusetts.

Our largest project concerns an issue that the *New York Times* editorial board has coined "prison-based gerrymandering." The Census Bureau counts incarcerated people as if they were residents of the census blocks that contain correctional facilities, rather than as residents of their legal home addresses. When legislative bodies use Census counts of correctional facilities to draw legislative districts, they unintentionally grant extra representation to those districts with prisons, and consequently dilute the votes of every resident of every district without a large prison.

For the last decade, I have been working to convince the Census Bureau to change where it counts incarcerated people, and working with state and local governments on interim solutions. Most notably, Maryland and New York have changed their laws and will be counting incarcerated people at home for redistricting purposes in this round of redistricting. As you know, bills were introduced in the last two sessions to follow suit. I provided some of the underlying research for the campaign in Connecticut, which as you know, helped to raise the issue of prison-based gerrymandering, but the legislature was unable to pass the proposed legislation in time. However, you need not wait another decade to take action to lessen the harm of prison-based gerrymandering. I'd like to speak today about two ways that you can greatly reduce the impact of prison-based gerrymandering during this redistricting cycle.

Prison-based gerrymandering is a particularly critical issue in Connecticut, where the prison population is almost large enough to be a district by itself. State law explicitly says that people in prison are not residents of the prison, so when people who are awaiting trial or serving time for misdemeanors vote, they are required to vote absentee at their home addresses. Even though state law is clear, Connecticut currently bases its districts on flawed Census data. The geographic inequities of using Census Bureau prison counts to draw districts are stark:

- Less than 20% of the state lives in Bridgeport, Hartford, New Haven, New Britain, Stamford or Waterbury, but more than half of the state's prisoners come from those 6 cities.

- The 5 towns that contain the majority (60%) of the state's prison cells — Cheshire, East Lyme, Enfield, Somers and Suffield — are home to less than 1% of the state's prisoners.

When legislators used Census counts of incarcerated people ten years ago to draw districts, the end result was to draw 7 state house districts that met federal minimum population requirements only because they were padded with prison populations. For example, each House district in Connecticut should have 22,553 residents. District 59 is unintentionally padded with the populations of several prisons, and has only 19,200 actual residents. This means that every group of 85 residents in this district is given just as much influence as 100 residents of districts without prisons. Prison-based gerrymandering is clearly unfair, and you can eliminate or greatly reduce its impact with one of the following two options:

The first option is to use existing data to reallocate incarcerated people back home as accurately as possible when drawing state Senate and Assembly districts. Specifically, you can use the Census Bureau's Advance Group Quarters Summary File[1] to remove the correctional facilities from the Census counts, and then use the Department of Correction's data for the town of residence of incarcerated people[2] to reallocate them to their home towns. This data cannot be used to reallocate people to individual Census blocks, but an algorithm could allocate people to blocks evenly within each city or town. This is not a perfect solution, but it is superior to the current practice of assigning almost a district's worth of people to a handful of locations where we all know they do not reside.

The Prison Policy Initiative did some preliminary work developing a reallocation algorithm, and we would be happy to complete our research and prepare a fully documented and adjusted dataset if it would be helpful to you. We've also processed the Census Bureau's Advance Group Quarters Summary File into a shapefile[3] and produced this table with the correctional population and Tract/Block location of each correctional facility in the state as reported by the Census Bureau:

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1 See Census Bureau's Advance Group Quarters Summary File available at http://www.census.gov/rdo/data/2010_census_advance_group_quarters_summary_file.html and Demos and Prison Policy Initiative press release "Advocates Hail Census Bureau's Release of Data to Assist in Correcting Prison-Based Gerrymandering", April 20, 2011, available at http://www.prisonersofthecensus.org/news/2011/04/20/groupquartersreleased/

2 See Christopher Reinhart, "Town of Residence of Incarcerated Inmates" Office of Legislative Research, OLR Research Report, 2010-R-0169, March 22, 2010. This report uses data from March 10, 2010, which is very close to the actual Census day. A copy of the report is archived at http://www.prisonersofthecensus.org/ct/ct_town_of_residence_03102010.pdf

3 Available at: http://www.prisonersofthecensus.org/data/2010/groupquartersshapefile.html

Correctional facilities and their locations as counted in the 2010 Census

County	Tract	Block	Correctional Population	Facility Name(s)	Facility Type(s)
Fairfield	071900	2004	910	Bridgeport Correctional	State
Fairfield	211100	1000	217	FCI Danbury	Federal
Fairfield	211100	1002	1,122	FCI Danbury	Federal
Fairfield	230502	2014	608	Garner Correctional Institution	State
Hartford	477102	4022	2,137	MacDougall-Walker Correctional Institution	State
Hartford	500700	1015	1,095	Hartford Correctional	State
Hartford	524300	1016	1,888	Willard-Cybulski and Enfield Correctional Inst.	State
Hartford	524300	1018	1,486	Robinson	State
New Haven	141600	2001	793	New Haven Correctional Center	State
New Haven	343101	1009	1,492	Cheshire Correctional Institution	State
New London	716101	1000	887	Gates Correctional Facility	State
New London	716101	1035	1,127	York Correctional Institution	State
New London	870502	1028	1,511	Corrigan-Radgowski Correctional Center	State
Tolland	538100	1005	2,339	Osborn and Northern Correctional Institutions	State
Tolland	881300	4000	1,017	Bergin Correctional Institution	State
Windham	905100	3023	458	Brooklyn Correctional Institution	State

Districts drawn under this option might, when viewed against the original Census data, exceed the 5% population deviations guidelines in *White v. Regester*, 412 U.S. 755 (1973). However, I note that *Mahan v. Howell* 410 U.S. 315, 330-332 (1973) allows a state to have a higher population deviation if it can show that a legitimate state interest was met by doing so. I suggest that putting the redistricting data in compliance with the statutory definition of residence[4] would be more than a sufficient legitimate state interest to justify a higher deviation. If anything, the data used under this proposal would be more likely to satisfy an equal protection review than would the practice of using Census Bureau prison counts to pad legislative districts where incarcerated people do not legally reside.

The second option is to draw the districts in such a way that the effects of prison-based gerrymandering are minimized without exceeding the *White v Regester* 5% limits. If your committee minimizes the clustering of large prisons and takes care to overpopulate any district that contains a correctional facility, it can ensure that the actual population of the district approximates the required ideal district size. We have determined that is possible to draw districts that comply with the 5% rule using both the Census Bureau's redistricting data and data that is adjusted to remove the prison populations. We further determined that this was possible while making only minimal changes to the existing Assembly and Senate district lines.

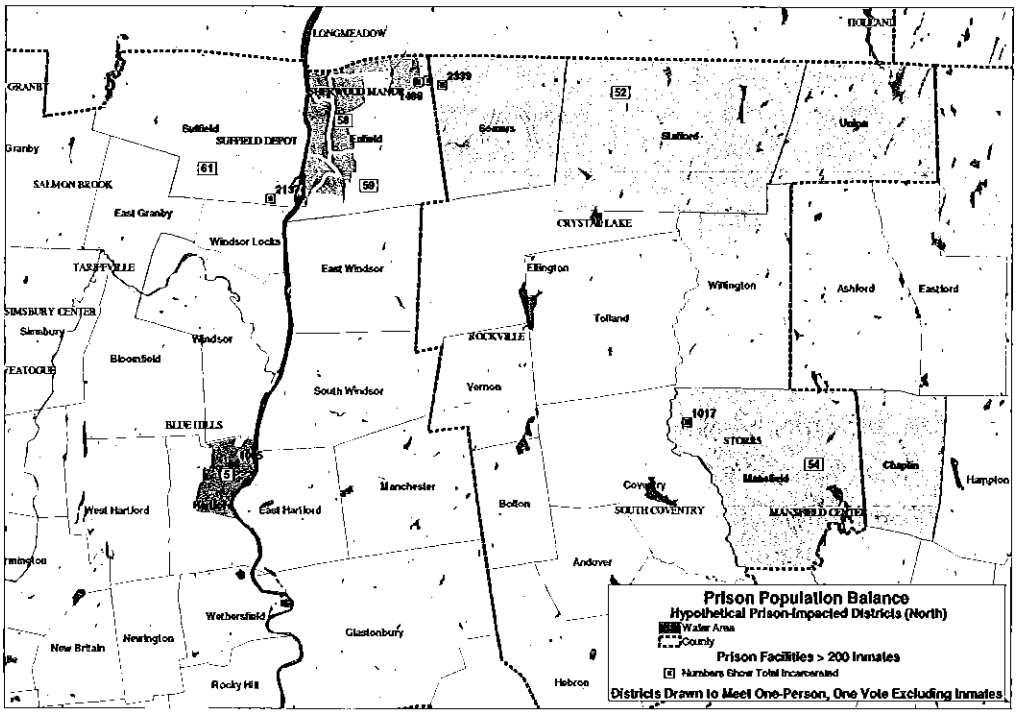
4 "No person shall be deemed to have lost his residence in any town by reason of his absence therefrom in any institution maintained by the state." General Statutes of Connecticut § 9-14.

The option depends on the state deciding to:

1. Split up the prisons to ensure that no Assembly district contains more than about 9.4% correctional population[5], and

2. overpopulate any district that contains a correctional facility, so that the district will be no more than 5% under-populated if the prison population is removed.

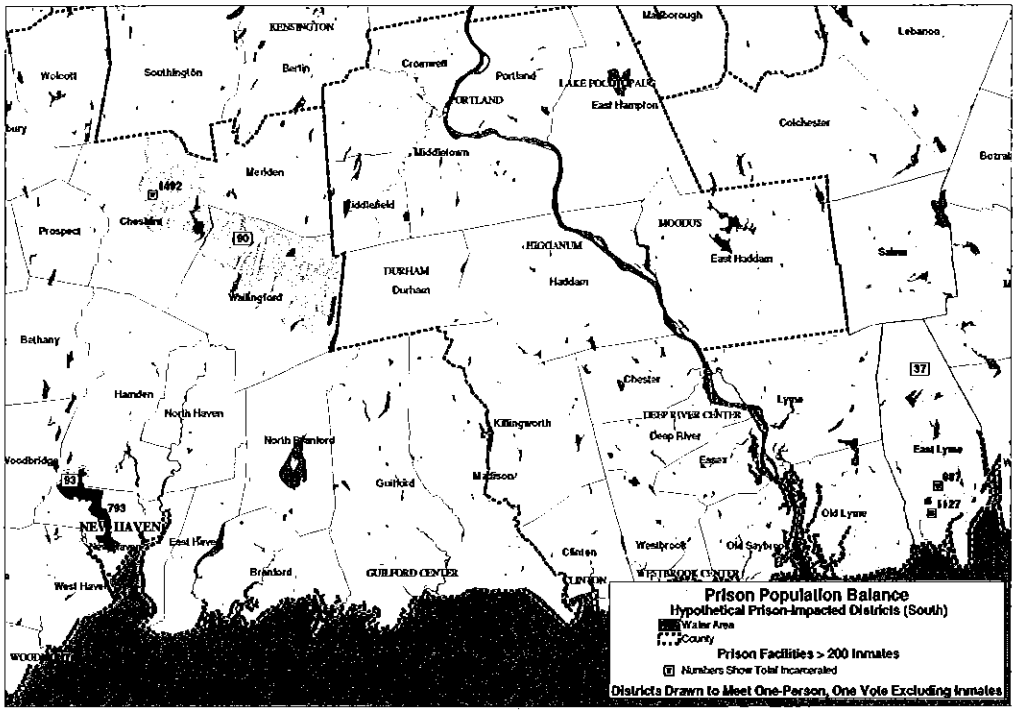
These maps and data table illustrate how the districts could be drawn in the House:



Data on Hypothetical Prison-Impacted Districts Drawn for Illustrative Purposes

District	Pop	Minority	% Minority	Ideal Size	Deviation	% Deviation	Group Quarters Incarcerated	% Group Quarters Incarcerated	Deviation excluding Incarcerated	% Deviation excluding Incarcerated
5	24751	22599	91.31%	23670	1081	4.57%	1168	4.72%	-87	-0.37%
37	24673	3983	16.14%	23670	1003	4.24%	2014	8.16%	-1011	-4.27%
52	24821	2880	11.60%	23670	1151	4.86%	2339	9.42%	-1188	-5.02%
58	24756	4627	18.69%	23670	1086	4.59%	1486	6.00%	-400	-1.69%
59	24383	3618	14.84%	23670	713	3.01%	1888	7.74%	-1175	-4.96%
61	24674	5433	22.02%	23670	1004	4.24%	2137	8.66%	-1133	-4.79%
90	24049	4188	17.41%	23670	379	1.60%	1492	6.20%	-1113	-4.70%
93	23626	17660	74.75%	23670	-44	-0.19%	853	3.61%	-897	-3.79%
139	24449	4120	16.85%	23670	779	3.29%	1511	6.18%	-732	-3.09%

5 The largest prison cluster is in Enfield, but those prisons can easily be split between the two Enfield districts. The second largest prison cluster is in Somers. For this proposal to work, that district must be drawn to contain only the Somers facility and not any additional incarcerated populations. The other prison clusters in the state are smaller, and Senate District 7 can be handled with the same principles.



Note that the Enfield prisons are shared between districts 58 and 59. District 52 is about 9.4% incarcerated, but the district is 4.86% overpopulated. The actual population of this district, if you remove the prison population, is 5.02% underpopulated and within the *White v. Regester* limits.

A similar method can be used in the Senate, adding just a single precinct to Senate District 7 to make it about 4% overpopulated. After taking out the four prisons, the district would be just under -4% deviation.

Methodologically, I suggest joining the table at the top of page 3, and/or using the shapefile linked from footnote 3 to your redistricting data to keep a running tally of the correctional populations in each district as you draw them. I would suggest including this tally in any summary reports you prepare on population, race, ethnicity, etc.

Of course, the ideal solution would count incarcerated people at their legal home addresses. In that case, towns that send many people to prison would be properly credited with their legal population. Towns that host prisons would not receive undue influence in the legislature, and everyone would get the same exact influence regardless of whether they lived next to a large prison.

The second option I propose comes close to this ideal solution. We reduce the enhancement of votes cast in districts that contain prisons, and by extension, reduce the dilution of votes cast in every other district in the state. To be sure, the proposal does, at least in the partial draft plan that I submit today, create a general underpopulation of the districts that contain the prisons. While some could see the underpopulation as a concession to the legislators who represent prisons, it is

the unavoidable byproduct of trying to draw districts around Connecticut's large prisons without exceeding the 5% population limit. Unless the state is willing to justify exceeding the 5% *White v Regester* rule, it is simply not possible to completely erase the population deviations caused by prison-based gerrymandering.

In contrast, continuing to use the prison populations to draw districts as the state has done in the past will result a systemic and dramatic transfer of political power to the districts that contain prisons at the detriment of everyone else in the state.

Some Connecticut precedent

I would like to emphasize that responding to the Census Bureau's misallocation of prison populations is not new to Connecticut. Ten years ago, the town of Enfield removed the prison population from the town council apportionment base in order to prevent the residents of the third district (where the prisons are located) from exercising undue influence over the town council. Enfield had the right idea.

It is clear under state law[6] that people in prison remain residents of their homes. For example, people incarcerated for misdemeanors and those awaiting trial who wish to vote must do so via absentee ballot at their home address. The state legislative districts should be drawn on the same principle: a prison cell is not a residence.

Thank you very much for this opportunity to testify.

More info at:

- Importing Constituents: Prisoners and Political Clout in Connecticut, is a district-by-district analysis of prison-based gerrymandering in Connecticut state legislative districts: http://www.prisonersofthecensus.org/ct/report.html

- Preventing Prison-Based Gerrymandering in Redistricting: What to Watch For is a guide for advocates who want to minimize the effects of prison-based gerrymandering in their state or community: http://www.demos.org/pubs/Preventing_pbg.pdf

- States are Authorized to Adjust Census Data to End Prison-Based Gerrymandering, and Many Already Do is a fact sheet summarizing the discretion given under federal law to adjust the Census for redistricting purposes: http://www.prisonersofthecensus.org/factsheets/adjusting.pdf

6 "No person shall be deemed to have lost his residence in any town by reason of his absence therefrom in any institution maintained by the state." General Statutes of Connecticut § 9-14.