



captive
constituents

Prison-Based Gerrymandering
& The Distortion of Our Democracy

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**LDF's POLITICAL
PARTICIPATION GROUP**

The Political Participation Group's mission is to use legal, legislative, public education, and advocacy strategies to promote the full, equal, and active participation of African Americans in America's democracy.



CAPTIVE “CONSTITUENTS”

Prison-Based Gerrymandering and the Distortion of Our Democracy

Most state and local governments count incarcerated persons as residents of the prison communities where they are incarcerated when drawing election district lines, despite the fact that prisoners are not integrated into those communities and are not residents there.

This practice, known as “**prison-based gerrymandering**,” artificially *inflates* the population count—and thus, the political influence—of the districts where prisons and jails are located. At the same time, this practice *reduces* the political power of everyone else. The viability of our communities, integrity of our democracy and basic principles of equality suffer as a result.



The “One Person, One Vote” Principle

The United States Constitution requires that election districts must be roughly equal in size, so that everyone is represented equally in the political process. Elected officials (with the exception of United States Senators) must represent roughly the same number of people, and each constituent is entitled to the same level of access to an elected official. This is known as the “**one person, one vote**” principle.

But because of prison-based gerrymandering, a person’s vote counts more if that person lives near a prison, in violation of the basic principle that each person’s vote should count equally.

Prison-based gerrymandering uses a captive and disfranchised population that is comprised disproportionately of people of color to inflate the political strength of the surrounding jurisdiction. It is all-too reminiscent of the infamous “three-fifths compromise,” whereby enslaved and disfranchised African Americans were counted to inflate the number of constituents—and thus, the political influence—of Southern states before the Civil War.

Prisoners Are Not Constituents of the Districts Where They Are Incarcerated

Prisoners should not be counted where they are incarcerated for several reasons:

Prisoners Are Not Legal Residents Where They Are Held. Nearly every state has a constitutional provision or statute providing that a person does not gain or lose residence in a place by virtue of being incarcerated there. Rather, a prisoner retains the legal residence that he or she had *prior to arrest*, and continues to maintain residence in that county for a variety of purposes, such as court and tax filings. And where prisoners are permitted to vote, as in Maine and Vermont, they do so by absentee ballot in their home communities.

Prisoners Are Not Integrated Into the Communities Where They Are Held.

Unlike groups such as students or military personnel, prisoners cannot establish ties to the surrounding community where they are imprisoned. They cannot utilize services such as parks and libraries. Prisoners are not located where they are by choice; rather, they are held at a particular facility at the discretion of the state, and can be moved at any time for any reason. Prisoners cannot vote in the districts where they are held, and the residents of surrounding communities generally do not share prisoners' concerns or interests.

Prisoners Remain Members of Their Home Communities. Prisoners remain legal residents of the communities where they lived prior to arrest. To the extent that prisoners have connections to the outside world, it is through their families and other relationships in these communities, to which they are released upon completion of sentence. But while the average length of incarceration for a state prisoner in the U.S. is less than 3 years, the population counts that treat prisoners as residents of a prison district remain in effect for a decade.

In spite of all this, prisoners in most states are counted as members of the districts where they are incarcerated, artificially inflating the political power of those districts at the expense of their own communities.



Prison-based gerrymandering uses people's bodies to count against their interests.

Prison-Based Gerrymandering Undermines Democracy

Statewide Effects

In New York, 66% of the state's prisoners come from New York City, but 91% of them are incarcerated upstate, a more rural and less populated region. In the 2000 Census, over 43,000 New York City residents were counted as members of upstate communities because of prison-based gerrymandering.

The Census Bureau counted **43,740** New York City residents in upstate prison cells.

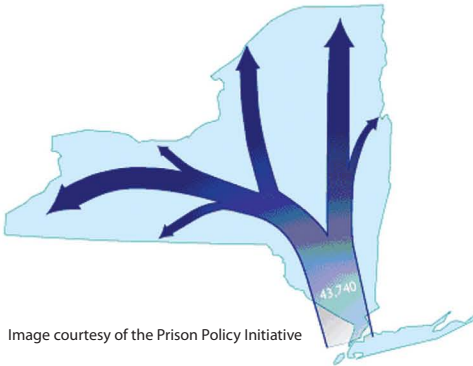


Image courtesy of the Prison Policy Initiative

Without these prison populations, seven of New York's State Senate districts from the 2000 redistricting cycle would not meet the minimum population requirements under federal law and would have to be redrawn, which would in turn change district lines across the state.

Local Effects

Prison-based gerrymandering also has negative effects on the rural counties that host prisons.

For example, in 2002 the town of Anamosa, Iowa was divided into 4 city council wards of approximately 1,370 people each. Ward 2, however, contained a state penitentiary, which was home to approximately 1,320 prisoners. The incredible result was that Ward 2 had only 50 true constituents, who held *the same political power* as the approximately 1,370 constituents in each of the other wards.

City Council Wards in Anamosa, Iowa

Ward 2 has all the perks of a City Council seat while representing only 58 constituents

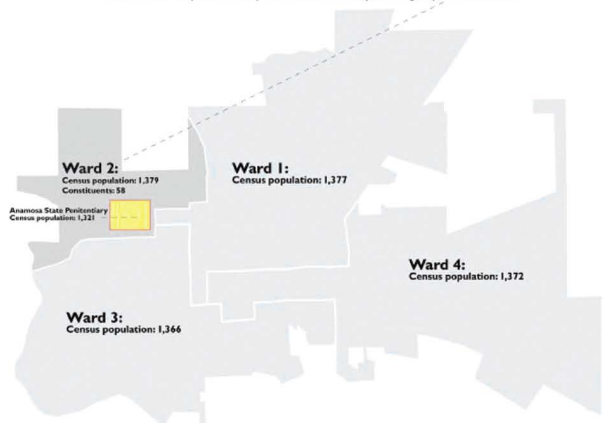


Image courtesy of the Prison Policy Initiative

Minority Vote Dilution

African Americans are 12.7% of the general population, but are 41.3% of the federal and state prison population. Nationally, African Americans and Latinos constituted 85% of the growth in the incarcerated population from 1970 to 2000.

But incarcerated persons are often held in areas that are far removed from their home communities in both distance and composition. Although non-metropolitan counties contain only 20% of the national population, they are host to approximately 60% of new prison construction.

In 173 counties nationwide, half of the purported African-American population are not true residents, but are actually prisoners imported from elsewhere. Thus, prison-based gerrymandering not only weakens the political strength of communities of color, it is also eerily reminiscent of the infamous “three-fifths compromise,” which enabled Southern states to amplify their political power by counting enslaved African Americans amongst their constituents.

Prison-based gerrymandering undermines minority voting rights in other ways as well. In 1986, Somerset County in Maryland created a majority African-American voting district in compliance with the Voting Rights Act, but more than half of the new district was comprised of prisoners, and over 60% of the district’s purported African-American population was incarcerated. As a result, African Americans in that district have never had a meaningful opportunity to elect a candidate of their choice.

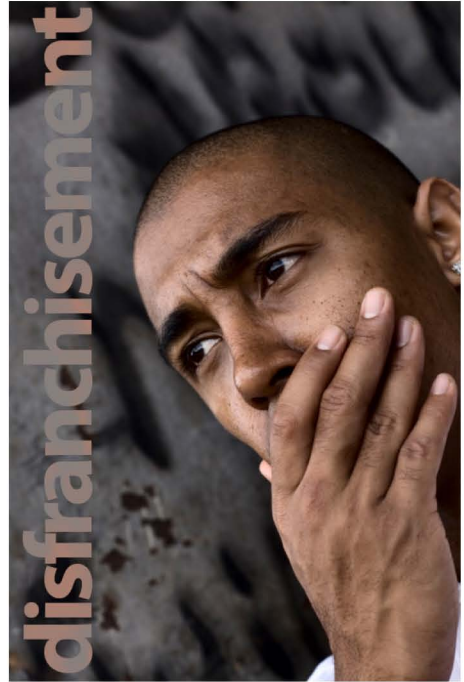


VOTING

Prison-Based Gerrymandering Has Massive Electoral Consequences

Over the last several decades, the number of incarcerated Americans has exploded. The state prison population nationwide, which was 220,000 in 1974, more than quintupled in size by 2000 to over 1.3 million, due in large part to the “War on Drugs.”

Today, the incarcerated population of the U.S. is over 2 million. It is roughly equal to Houston, our fourth-largest city. It is larger than that of fifteen individual states, and larger than the three smallest states *combined*. If the incarcerated population could form its own state, it would qualify for *five votes in the Electoral College*.



Where prison populations are counted has tremendous influence in shaping our democracy.



Fixing the Problem

Reform at the State and Local Level

In February 2010, the U.S. Census Bureau agreed, for the first time, to make information on prisoner population numbers available to states and localities in time for those figures to be taken into account in the redistricting process. States and localities will now have the ability to draw election districts without engaging in prison-based gerrymandering.

In April, 2010, Maryland became the first state to pass legislation requiring that prisoners be counted at their pre-arrest addresses when drawing election district lines. This will ensure that prisoners are counted at the proper locations, and that everyone's vote in Maryland will count equally, whether or not they live near a prison. Many other states are currently considering similar legislation.

At the local level, dozens of counties nationwide have refused to engage in prison-based gerrymandering by not counting prisoners when drawing district lines. Since nearly all prisoners come from communities outside of the county, this local practice has the same practical effect as counting prisoners at their true home addresses.

Contact your state and local representatives to let them know that you support an end to prison-based gerrymandering!

Reform at the National Level

Advocates are engaged in a long-term campaign to encourage the Census Bureau to implement a permanent solution, in which the decennial census would identify the home communities of incarcerated persons and count them appropriately. An accurate population count during the next Census can solve the problem of prison-based gerrymandering once and for all.

Contact your federal representative to let them know that you agree that the Census Bureau should count incarcerated persons at their home addresses!

Frequently Asked Questions

Q: *How are prisoners different from other groups like students? If we count students in their dorms, shouldn't we count prisoners where they are housed?*

A: Unlike students, prisoners are not a part of the local community. They are even prohibited from becoming legal residents there. They are barred from leaving their facility without official permission. And, of course, prisoners cannot vote in the districts where they are incarcerated. Students, on the other hand, can utilize local services like parks, libraries, highways and roads, and can build ties in the local community. The college is the place they willingly live, which is the very definition of residence.

Q: *If most prisoners can't vote, why count them at all?*

A: Everybody counts, whether they can vote or not. The Census counts non-voting populations such as children, who are included as part of a district's population during redistricting. The issue is not whether prisoners should be counted, but where. Tellingly, in the two states that permit prisoners to vote (Maine and Vermont), prisoners vote by absentee ballot in their home communities.

Q: *Are states and localities required to use the federal census when conducting redistricting?*

A: State and local governments are not required by federal law or the U.S. Constitution to use any particular set of data when redistricting. Although redistricting must be based on reliable population numbers, states and localities are free to adjust census data to correct how the federal census counts prisoners.

Q: *Do states have the means to count prisoners in their home communities during the redistricting process?*

A: States already possess the address information of prisoners, or have access to that information. According to the New York City Bar Association, after address information from prisoners is compiled, computer mapping software would make it relatively easy to reallocate those individuals back to their home communities for redistricting purposes.

Additional Information

*For additional information on
prison-based gerrymandering, please visit:*

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PRISON POLICY INITIATIVE
www.prisonersofthecensus.org



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