



**Testimony of Brenda Wright  
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Dēmos: A Network for Ideas & Action  
Before the  
Special Joint Committee on Redistricting  
of the Massachusetts General Court  
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Thank you, Chairman Rosenberg, Chairman Moran, and members of the Committee for providing the opportunity for testimony here today. I am the Director of the Democracy Program at Dēmos, a national, non-profit, non-partisan research and policy organization, established in 2000, with offices in Boston, New York, Washington, D.C., and Austin, Texas. The Dēmos Democracy Program works to ensure high levels of voting and civic engagement, and supports reforms to achieve a more inclusive and representative democracy. I am an attorney with over 20 years of experience in redistricting, voting rights, and election reform, and was part of the legal team that represented community groups and organizations in the federal lawsuit challenging the Massachusetts House redistricting plan adopted after the 2000 Census.

I am also a member of the Board of Advisors for the Prison Policy Initiative, a non-profit center in Northampton which for the last decade has been the leading organization studying how the U.S. Census counts people in prison and working to quantify the policy and legal implications flowing from those technical decisions. And although I am very interested in the broad range of issues affecting fairness in representation for Massachusetts communities, I am going to focus my remarks today on the specific issue of incarcerated populations and the manner in which they are counted for purposes of redistricting. This issue has become increasingly important to the fairness of redistricting around the country, and it is important here in Massachusetts.

The problem stems from a long-standing flaw in the Census that counts incarcerated people as residents of the district where they are incarcerated rather than in their home district. Crediting incarcerated people to the census block that contains the prison, rather than to the home community that remains the legal residence of incarcerated persons, results in a significant enhancement of the weight of a vote cast in districts with prisons at the expense of all other residents in all other districts in the state. It particularly distorts fair representation for communities of color, which are disproportionately affected by high rates of incarceration.

The rules that the Census Bureau uses for determining “residence” were adopted long before prison populations in the U.S. became large enough to have a significant effect on representation. The U.S. now has some 1.6 million persons in state and federal prisons. In Massachusetts, the growth of prison population in recent decades has been enormous. As a percentage of population, Massachusetts now incarcerates three times as many people as it did as recently as 1980, according to data maintained by the Prison Policy Initiative. And prisons are frequently located in areas geographically and demographically removed from the home communities of incarcerated persons.

Because of the rise in incarceration rates, the practice of allocating incarcerated persons to prison districts substantially skews redistricting. As shown by research conducted by the Prison Policy Initiative, without using prison populations as padding, five Massachusetts House districts would not have met minimum constitutional population requirements after the 2000 Census.

For example, each House district in Massachusetts should have 39,682 residents. The 7<sup>th</sup> Hampden district has only 36,484 actual residents because it includes over 1600 persons incarcerated at the Hampden House of Corrections, who cannot vote and are not legally considered residents of Hampden for other purposes. The population of the district is really about 8% smaller than the ideal district size, meaning that every 92 people in Ludlow and nearby areas has as much voting power and representation as 100 people elsewhere in the state. Ultimately, everyone in Massachusetts who does not live in a district that contains a prison has their voting strength and representation diluted in the General Court as compared to districts that are padded with prison population.

Current house districts with the largest distortions from prison population (as redistricted a decade ago based on 2000 Census data):

<b>District</b>	<b>Population (Census)</b>	<b>Prison Population</b>	<b>Actual Population Deviation</b>
3rd Suffolk	37,986	1,558	-8.20%
7th Hampden	38,144	1,660	-8.06%
14th Worcester	38,364	1,220	-6.40%
9th Norfolk	40,024	2,596	-5.68%
37th Middlesex	40,520	3,013	-5.48%

Massachusetts law makes it clear that incarcerated persons generally cannot claim a prison as their home residence. Until 2000, incarcerated Massachusetts residents could vote, and the question of where they could vote was a frequent subject of litigation. In the late 1970s, people in prison were considered to be presumptive residents of their home addresses. Only in rare special situations could an incarcerated person argue that he intended to remain in the prison community permanently; but by the early 1980s, even this narrow loophole was removed and all incarcerated voters in the state were required to vote as residents of their pre-incarceration homes. *Cepelonis v. Commonwealth*, 389 Mass. 930 (1983). Regardless of whether a specific prisoner was intending to never return home, state law barred him from adopting the prison address as his residence.

Moreover, the city of Gardner already bases its districts on actual, not prison populations, by excluding the prison population from its redistricting data for purposes of local redistricting. Maryland and New York have amended their statutes to count incarcerated people at their home addresses.

Although it would be difficult for the state to take that step at this time, especially considering restrictive language in the Massachusetts Constitution, there are nevertheless several steps the Legislature can take to address the distortions cause by allocating incarcerated persons to the prison district.

First, in the current redistricting effort, this Committee should seek to minimize the effect of prison-based gerrymandering by making sure that districts containing population are not otherwise underpopulated. As you know, a variation of plus or minus 5% of ideal district size is permitted for state legislative districts. When a district is based in part on prison population, the Committee should make sure that the deviation for that district is on the plus-5% side (referred to as “over-populating” the district). Drawing districts that over-populate areas with prisons, up to the 5% threshold, will partially offset the dilutive impact of counting incarcerated populations as part of the prison district. At the same time, the Committee should avoid over-populating urban districts that do not contain prisons but that comprise the home communities of incarcerated persons, because this will only exacerbate the dilutive effects of allocating prison populations to prison districts. Those districts instead should be kept at under ideal size, up to the minus-5% threshold.

Second, for the long term, the Legislature should take steps to ensure a more permanent change prior to the next Census. The Legislature should enact a resolution calling on the Census Bureau to change its policy and provide states with population counts that allocate incarcerated persons to their home communities. In addition, the Legislature should work to amend the Massachusetts Constitution to allow the Legislature to make its own adjustments to the Census data, so that Massachusetts can correct this problem even if the Census Bureau refuses to act.

The basic principle of our democracy is that representation is distributed on the basis of population. Crediting incarcerated people to the wrong location has the unfortunate and undemocratic result of creating a system of “Representation Without Population.” Massachusetts should make its best efforts to minimize the effects of this practice in the current redistricting cycle, and to adopt more permanent solutions going forward.

Finally, I want to emphasize one issue of process that is vitally important to the fairness, transparency and ultimate legality of any plan adopted by this Committee. While it is helpful to hold these public hearings to obtain the public's input before the lines are drawn, these hearings will not be meaningful unless the public also has an opportunity to comment on the plans actually created by this Committee, before they are voted on by the Legislature. During the redistricting process a decade ago, this Committee filed its plans with the Clerk on a Thursday, and the floor vote was taken on Monday. The plans actually changed dramatically between Thursday and Monday, and the public never had an opportunity to evaluate or even examine the final plans before the vote was taken. This Committee and its leadership have made commendable commitments to ensure that the process this time around is more open and transparent, but the key test of transparency will be whether the public has time to review and comment upon the redistricting plans this Committee creates and files with the Clerk, before those plans are voted upon by the Legislature. **Dēmos recommends that the Committee's plans should be filed with the Clerk at least three weeks before any vote is taken on adoption of the plans.** And, if the redistricting plans are amended during the Legislature's deliberations, those amended plans should also be shared with the public well before a final vote is taken. This opportunity for public comment on the Committee's proposed redistricting legislation will be critical to the Committee's goal of an open and transparent process.

Thank you very much for this opportunity to testify.

More information is available:

*Importing Constituents: Prisoners and Political Clout in Massachusetts*, is a district-by-district analysis of prison-based gerrymandering in Massachusetts state legislative districts:

<http://www.prisonersofthecensus.org/ma/report.html>

Summary of Prison-based gerrymandering issues in Massachusetts (part of a report on all 50 states):

<http://www.prisonersofthecensus.org/50states/MA.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/publication.cfm?currentpublicationID=B12C8735-3FF4-6C82-51A5D7F9E05F958B>