Preventing Prison-Based Gerrymandering in Redistricting: What to Watch For

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Prison-based gerrymandering is the practice of counting incarcerated persons as "residents" of a prison when drawing legislative districts in order to give extra influence to the districts that contain the prisons. The U.S. Constitution requires that election districts be roughly equal in size, so that everyone is represented equally in the political process. But prison-based gerrymandering distorts our democracy by artificially inflating the population numbers — and thus, the political clout — of districts with prisons, while diluting the political power of all other voters.

That this problem exists at all is largely an accident of two facts: (1) an outdated Census Bureau methodology that counts people in prison as residents of the correctional facilities, not of their legal home addresses; and (2) the skyrocketing rates of incarceration. Hopefully, in the future, the Census Bureau will eliminate the problem by counting incarcerated people as residents of their legal home addresses. Last year, three states — Maryland[1], Delaware[2] and New York[3] — had the foresight to pass legislation to eliminate prison-based gerrymandering within their borders. These three states now require that districts be based on Census data adjusted to reflect incarcerated people at their home addresses. More than a hundred rural counties and municipalities[4] around the country have historically refused to engage in prison-based gerrymandering; they manually remove prison populations prior to drawing districts for local government. But most states and jurisdictions will still face the problem of prison-based gerrymandering in the upcoming round of redistricting.

When your legislature announces a proposed redistricting plan and invites public comment, you'll need to act quickly to identify if and exactly how they used prisons to distort democracy in your state, county or city. This guide will tell you what to look for in the data and the state's proposed plan in order to minimize the harm of prison-based gerrymandering.

(This guide assumes you have a mapping staff or sympathetic technical people on the redistricting body to assist you. Your technical allies can refer to our memo, Using the Census Bureau's Advanced Group Quarters Table[5], which explains the timing, value, content and limitations of the Bureau's prison count data.)

PROTECTING MINORITY VOTING STRENGTH

Sometimes, a district that seems to have a majority-minority population really doesn't, because of prison-based gerrymandering. If the minority "population" of the district consists of a large number of incarcerated persons – who can't vote – the district population numbers may be distorted. This creates districts that appear to give minorities the ability to elect the candidate of their choice, but in reality, they cannot. You need to examine any majority-minority district that includes a prison, to ensure that the district really has enough *voting-eligible* persons of color to create a viable majority with the ability to elect a candidate of choice to office.

Example: In order to settle a Voting Rights Act lawsuit, Somerset County, Maryland, intended to draw a district where African-Americans could elect a candidate of their choice after the 1990 and 2000 Censuses. But the inclusion of a large prison in the 1st Commission District split the sizable African-American resident voting population between two districts, leaving neither district able to elect a candidate of the African-American community's choice. While the 1st Commission District appeared to be majority-African-American, in reality the district was not able to function as intended, because many of the purported African-American "residents" of the district were actually behind bars.

Similarly, although to different effect, prison populations sometimes create a false picture of racial and ethnic "diversity" within a district. Pointing out these examples is an effective way to raise the issue of prison-based gerrymandering and can be a powerful fact to raise if, as discussed in the next section, the state has under-populated districts that contain prisons.

Example: District 2B in western Maryland drawn after the 2000 Census appears to be 15% African-American. But nearly all of that African-American population actually consists of incarcerated residents from other parts of the state who are unable to vote or to interact with the community in any way. The actual population of the district is overwhelmingly white.

Example: In 2002, the New York State Senate deliberately underpopulated districts in the upstate region while overpopulating districts in the downstate region. This problem ran parallel to the fact that the Census Bureau credited downstate residents to upstate census counts, and together served to dilute minority voting rights. For example, one of those upstate districts was the 59th Senate District, drawn to contain 294,256 people instead of the 306,072 that each district should have contained. Using Census data, the state reported that the district contained 6,273 African Americans, but three quarters of this population was incarcerated residents of other parts of the state. The legislature used the prison population to disguise the fact that the district had the smallest African-American population of any senate district in the state *and* they deliberately underpopulated that district to give it extra influence.

KEEPING PRISON-BASED GERRYMANDERING FROM MAKING OTHER MALAPPORTIONMENT ISSUES WORSE

Advocates should examine what percentage of each district is actually incarcerated, and how that interacts with the existing population deviations in the proposed districts. Keep in mind that in the strange world of redistricting, "underpopulated" districts have more political power than "overpopulated" districts, because in underpopulated districts, fewer people get the same opportunity to elect a representative as a larger number of people crowded into an "overpopulated" district. For that reason, a district that nominally falls within the 5% deviation rule applicable to state and local districts, but would fall outside that deviation without the prison population, should raise a red flag, and should be examined carefully to determine if the deviation should be reduced. Apart from that specific situation, any districts having large prisons should be scrutinized to avoid underpopulation of such districts compared to ideal district size, because including prison population magnifies the underpopulation of the district.

Note that the inverse is also a concern, even if we don't have precise block-level data about the pre-incarceration home residence of people in prison who are currently being counted as "residents" of prisons. For example, you can use the fact that incarcerated people should have been counted at home to argue against extreme overpopulation of urban districts where incarcerated people disproportionately come from.

LIMITING THE VOTE ENHANCEMENT IN DISTRICTS WITH PRISONS

Advocates should consider whether, if insufficient time remains to collect the home addresses of incarcerated people for this round of redistricting, the legislature can be persuaded to declare all incarcerated people to live at "unknown addresses" and not include them in the individual districts that contain prisons. (See Interview with Justin Levitt[6] of the Brennan Center for Justice for more on why "unknown addresses" is superior to the Census Bureau's status quo.)

If the legislature will not consider removing the prison populations from individual districts, advocates should examine ways to limit the magnitude of the vote enhancement to each district that contains a prison. Advocates should determine what percentage of each proposed district is actually incarcerated, and consider whether it is possible to configure the districts so that multiple large prisons are not concentrated in an individual district, thereby lessening the size of the vote enhancement in the prison districts. Similarly, if a single block contains a massive prison, advocates should consider whether the block could be split in two, so that the prison population can be placed in two different districts, thereby lessening the vote enhancement in any one district.

RESOURCES

- The Public Mapping Project[7] is an open source redistricting package intended for shadow redistricting commissions and advocates. The software is building in support for advocates who wish to use alternative datasets, including Census data adjusted to remove prison populations, in their plans.

- Using the Census Bureau's Advanced Group Quarters Table.[8]

- Data[9] about prison-based gerrymandering, links to the database of historical (2005-2010) correctional statistics, and where, in May, we will post shapefiles with the Census Bureau's group quarters data table and adjusted redistricting data that removes the prison populations and annotations of the blocks that contain correctional facilities with facility names, types, and more detailed demographic data.

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ENDNOTES

1. Maryland: http://www.prisonersofthecensus.org/maryland.html
2. Delaware: http://www.prisonersofthecensus.org/de.html
3. New York: http://www.prisonersofthecensus.org/newyork.html
4. Select counties, cities, and towns that exclude prison populations from local redistricting: http://www.prisonersofthecensus.org/local/
5. Using the Census Bureau's Advanced Group Quarters Table: http://www.prisonersofthecensus.org/technicalsolutions.html
6. Interview with Justin Levitt: http://www.prisonersofthecensus.org/news/2010/05/20/podcast1/
7. Public Mapping Project: http://publicmapping.org/
8. Using the Census Bureau's Advanced Group Quarters Table: http://www.prisonersofthecensus.org/technicalsolutions.html
9. 2010 Census data page http://www.prisonersofthecensus.org/data/