IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

MARC McCORMICK, LAURA NEWBERRY, ROGER GADDIS and CLAIRE ROBINSON DAVEY, Protestants/Petitioners, v. ANDREW MOORE, JANET ANN LARGENT and LYNDA JOHNSON, Respondents/Proponents.	)	Sup. Ct. Case No. 118,685

APPENDIX OF RESPONDENTS/PROPONENTS
ANDREW MOORE, JANET ANN LARGENT AND LYNDA JOHNSON

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ATTORNEYS FOR RESPONDENTS/ PROPONENTS

March 12, 2020

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INDEX TO CONTENTS OF RESPONDENTS' APPENDIX

Following is the index to the contents of Respondents' Appendix, pursuant to Sup. Ct. R. 1.191(d)(3):

Appendix No.	Description and Date (If Any)
1	Prison Policy Initiative, "The Problem," *available at* https://www.prisonersofthecensus.org/impact.html
	Synopsis: This article outlines several of the commonly identified problems associated with counting incarcerated persons where they are incarcerated, instead of in their home communities, for purposes of redistricting
	Relevance: This helps demonstrate that there is (more than) a rational basis for counting incarcerated persons in their home communities for purposes of redistricting
2	Kate Carlton Greer, "How Political Districts With Prisons Give Their Lawmakers Outsize Influence" (Nov. 7, 2016), *available at* https://www.kosu.org/post/how-political-districts-prisons-give-their-lawmakers-outsize-influence
	Synopsis: This article outlines several of the commonly identified problems associated with counting incarcerated persons where they are incarcerated, instead of in their home communities, for purposes of redistricting
	Relevance: This helps demonstrate that there is (more than) a rational basis for counting incarcerated persons in their home communities for purposes of redistricting
3	Wagner & Lavarreda, "Importing Constituents: Prisoners and Political Clout in Oklahoma" (Sep. 21, 2009), *available at* https://www.prisonersofthecensus.org/ok/report.html
	Synopsis: This article outlines several of the commonly identified problems associated with counting incarcerated persons where they are incarcerated, instead of in their home communities, for purposes of redistricting, particularly in Oklahoma
	Relevance: This helps demonstrate that there is (more than) a rational basis for counting incarcerated persons in their home communities for purposes of redistricting

4 Hansi Lo Wang & Kumari Devarajan, "'Your Body Being Used': Where Prisoners Who Can't Vote Fill Voting Districts," *available at* https://www.npr.org/sections/codeswitch/2019/12/31/761932806/your-body-being-used-where-prisoners-who-can-t-vote-fill-voting-districts

Synopsis: This article outlines several of the commonly identified problems associated with counting incarcerated persons where they are incarcerated, instead of in their home communities, for purposes of redistricting

Relevance: This helps demonstrate that there is (more than) a rational basis for counting incarcerated persons at their home address for purposes of redistricting

5 Dir. Robert Groves, "So How Do You Handle Prisons?" (Mar. 1. 2010), *available at* https://www.census.gov/newsroom/blogs/director/2010/03/so-how-do-you-handle-prisons.html

Synopsis: This blog post by the Director of the Census Bureau explains that its decision to continue counting incarcerated persons at the facility where they are incarcerated is largely an administrative one, and that the Bureau will facilitate state efforts to reallocate these individuals for purposes of redistricting

Relevance: This explains that the Census Bureau itself recognizes that counting incarcerated persons in their home communities is a reasonable decision states can make, and is working to facilitate it

6 Prison Policy Initiative, "Legislation," *available at* https://www.prisonersofthecensus.org/legislation.html

Synopsis: This article explains that similar laws changing how incarcerated persons will be counted for purposes of redistricting have been implemented in seven other states (including some that used this approach for the last redistricting cycle)

Relevance: This helps to illustrate that IP426 is an approach similar to that taken in other states

7 Kerry Tipper & James Coleman, Denver Post, "Why we're about to end prison gerrymandering in Colorado," Feb. 26, 2020, *available at* https://www.denverpost.com/2020/02/26/guest-commentary-why-were-about-to-end-prison-gerrymandering-in-colorado/

Synopsis: This article explains that a similar law changing how incarcerated persons will be counted for purposes of redistricting has passed the Colorado legislature and is awaiting the Governor's signature

Relevance: This helps to illustrate that IP426 is an approach similar to that taken in other states

8 *Little v. LATFOR*, No. 2310-2011 (N.Y. Sup. Ct. Dec. 1, 2011)

Synopsis: This opinion upholds a New York law that requires adjustment of census data to count incarcerated persons at their "residential addresses prior to incarceration" for purposes of redistricting

Relevance: This illustrates that other courts have upheld similar laws against similar constitutional challenges

9 Respondents/Proponents' Brief in Response to Application and Petition to Assume Original Jurisdiction and Review the Constitutionality of Initiative Petition No. 420, Sup. Ct. No. 118,405 (filed Dec. 5, 2019)

Synopsis: This brief explains why the qualifications for Commissioner set forth in IP426 do not violate the First Amendment, and why the Court should not consider such a challenge at this stage in any event

Relevance: Protestants incorporated their prior First Amendment challenge by reference in this action. This Response is thus similarly incorporated by reference.

10 "State Chamber Welcomes Karma Robinson to Staff," Oct. 6, 2014, *available at* https://www.okstatechamber.com/blog/post/state-chamber-welcomes-karma-robinson-staff

Synopsis: This article explains Karma Robinson's extensive involvement in fundraising and working for conservative organizations such as the Oklahoma Council of Public Affairs, and identifies her as the mother of Claire Robinson

Relevance: This article explains the interests of Protestant Claire Robinson Davey's immediate family member

11 Trevor Brown, Oklahoma Watch, "Bucking Ethics Proposal, Legislators Become Lobbyists" (Feb. 19, 2019), *available at* https://oklahomawatch.org/2019/02/19/bucking-ethics-proposal-legislators-become-lobbyists/

Synopsis: This article explains how former legislators very frequently become lobbyists in Oklahoma, or otherwise attempt to monetize their connections with the legislature

Relevance: This demonstrates that former elected officials will quite often continue to have conflicts of interest even after no longer serving in office

12 Kevin Bogardus, "Statehouse Revolvers: Study finds more than 1,300 ex-legislators among 2005 state lobbying ranks" (Oct. 12, 2006, updated May 19, 2014), available at https://publicintegrity.org/politics/state-politics/influence/hired-guns/statehouse-revolvers/

Synopsis: This article explains the revolving door of elected officials and lobbyists, "legislative liaisons," and "government relations experts"

Relevance: This demonstrates that former elected officials will quite often continue to have conflicts of interest even after no longer serving in office

13 Ben Botkin, Oklahoma Watch, "After Prison, Many Oklahomans Are Banned from Voting for Years," *available at* https://oklahomawatch.org/2018/06/18/after-prison-many-oklahomans-are-prohibited-from-voting-for-years/

Synopsis: This article explains that incarcerated persons convicted of felonies cannot vote in Oklahoma at all, but *non-felons* do not vote where they are incarcerated; rather, they vote by absentee ballot in their home communities

Relevance: This article illustrates that incarcerated persons are not considered legal residents of the facility where they are incarcerated under Oklahoma law, even for voting purposes

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of March, 2020, a true and correct copy of the above and foregoing document was mailed, postage prepaid, to the following:

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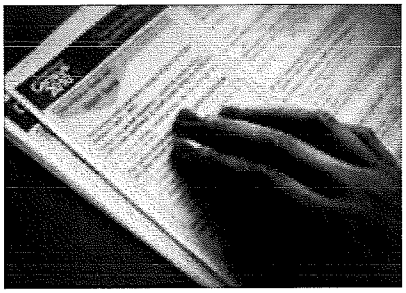
PRISON GERRYMANDERING PROJECT

from the Prison Policy Initiative

The Problem



The way the Census Bureau counts people in prison creates significant problems for democracy and for our nation's future. It leads to a dramatic distortion of representation at local and state levels, and creates an inaccurate picture of community populations for research and planning purposes.

The Bureau counts incarcerated people as residents of the towns where they are confined, though they are barred from voting in 48 states and return to their homes after being released. The practice also defies most state constitutions and statutes, which explicitly state that incarceration does not change a residence.

The Bureau's approach to counting incarcerated people dates back to the beginning of the census, when it was important only to count the number of people in each state to ensure equal representation in Congress. Congressional apportionment relied on the comparative populations of the states, not where people were relative to each other within each state. Now that Census data are used for redistricting at all levels of government, the specific location of populations is critical. The prison population has risen exponentially in the past couple of decades; counting the people in prison in the wrong place now undermines the Supreme Court's requirement that political power be apportioned on the basis of population. The process of drawing fair and equal districts fails when the underlying data are flawed.

State democracy

Some state legislative districts draw large portions of their political clout, not from actual residents, but from the presence of a large prison in the district. The districts with large prisons get to send a representative to the state capital to advocate for their interests without meeting the required number of residents.

"This bogus inflation gives prison districts undeserved strength in the state legislature and more influence than they would otherwise have in state affairs."

Phantom Constituents in the Census, *New York Times* editorial, Sept. 26, 2005

Because prisons are disproportionately built in rural areas but most incarcerated people call urban areas home, counting prisoners in the wrong place results in a systematic transfer of population and political clout from urban to rural areas.

- 60% of Illinois' prisoners are from Cook County (Chicago), yet 99% of them are counted outside the county.

When this data is used to draw legislative districts, the impact is startling: many prison districts have a significant percentage of their "residents" behind bars.

- In Texas, one rural district's population is almost 12% prisoners. Eighty-eight residents from that district, then, are represented in the State House as if they were 100 residents from urban Houston or Dallas.

Using prisons to enhance votes in individual districts within one region cumulatively gives the whole region additional representation.

- Prison-based gerrymandering helped the New York State Senate add an extra district in the upstate region. Without using prison populations as padding, seven state senate districts would have to be redrawn, causing line changes throughout the state.

When districts with prisons receive enhanced representation, every other district in the state without a prison sees its votes diluted. And this vote dilution is even larger in the districts with the highest incarceration rates. Thus, the communities that bear the most direct costs of crime are therefore the communities that are the biggest victims of prison-based gerrymandering.

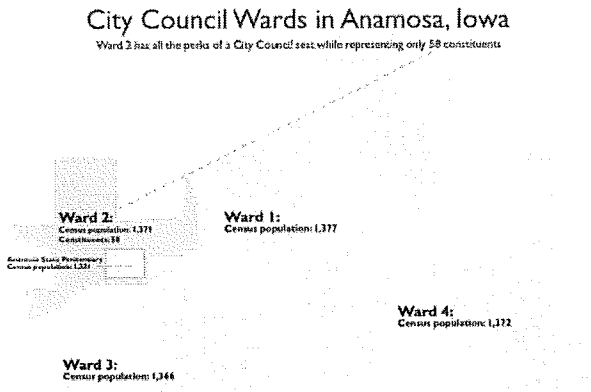
The Census Bureau's decision to count incarcerated people in the wrong place interferes with equal representation in virtually every state. Our research on how prison-based gerrymandering distorts democracy in the states is collected on our state impact page.

Local democracy

The relatively small populations of cities and towns mean that the placement of a single prison can have a significant impact on their population. Rural residents who live in the same community as a prison, but not in its district, have their voting power severely diluted.

In many rural county and city governments, substantial portions of individual districts consist of incarcerated people, not actual residents. In a number of places,

we've found elected officials who owe a *majority* of their clout to prison populations.



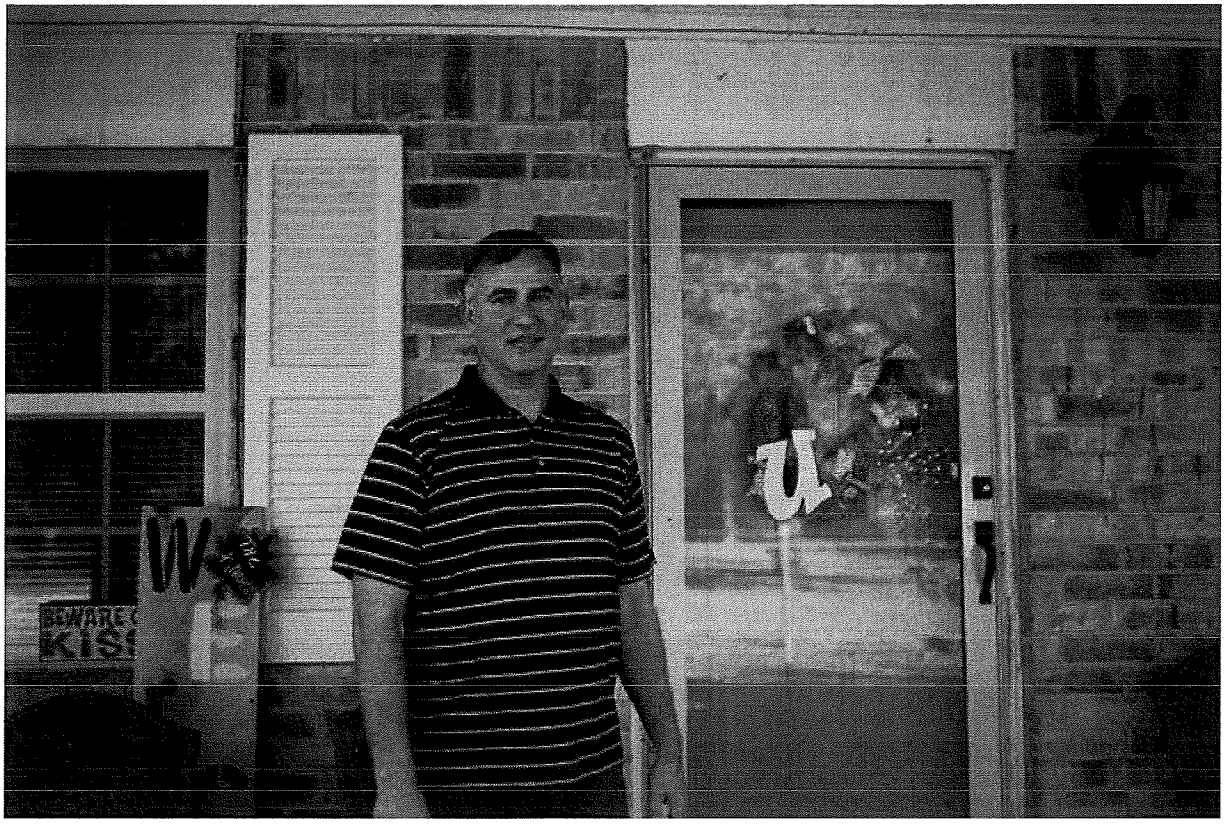
One of those places was the small city of Anamosa Iowa, which became a national symbol of prison-based gerrymandering when the incumbent retired, no one ran for office and Danny R. Young was elected with two write-in votes. A large state penitentiary means that Ward 2 had just a handful of city residents, compared to about 1,400 in each of the other 3 wards. The actual population of Councilman Young's district was 58, giving his constituents about 25 times as much clout as those in the other wards.

The residents of Anamosa rejected this inequality and changed their form of government to eliminate the prison district. While Anamosa chose to eliminate the district system altogether, other places have simply removed prisons from the local population count when drawing their district lines.

To date, over 200 communities have discovered the problem with their representation and successfully drew districts that exclude the prison populations. Our local impact page has analyses of democratic distortion on the local level, and examples of communities that have lobbied for fair representation.

How Political Districts With Prisons Give Their Lawmakers Outsize Influence

By KATE CARLTON GREER (HTTPS://WWW.KOSU.ORG/PEOPLE/KATE-CARLTON-GREER) • NOV 7, 2016



(https://www.kosu.org/sites/kosu/files/styles/x_large/public/201611/161027_Robert-Karr.jpg)

McAlester's 4th Ward councilman Robert Karr

KATE CARLTON GREER / OKLAHOMA PUBLIC MEDIA EXCHANGE

After finishing up work at the airplane manufacturing plant where Robert Karr has worked for more than three decades, the McAlester city councilman drives his pickup truck around the town's 4th ward. Karr has lived in this area almost his entire life, save for six years when his family moved out of town.

Listen
4:56

His 4th ward roots are deep, and Karr knows his constituents well.

"This guy right here is pretty interesting," Karr says as he drives past a one-story brick home. "He's got his Batmobile car back there, if you ever want to see a nice Batmobile car."

A few blocks down the road, Karr stops short of a barbed wire fence in front of a massive white brick building. There's a guard tower, and three men in orange jumpsuits are walking the grounds.

"This is the entry to the prison. When we was kids, we ran all over here. Used to fish on prison property and get run off," he says.

The Oklahoma State Penitentiary sits in Karr's ward. But it's not the only prison here. The Jackie Brannon Correctional Center is another block away. And those prisoners — all 1,500 or so — are technically Karr's constituents.

The U.S. Census Bureau counts prisoners at the location they're at on the day of the census, instead of at their home residence. That's different than the way college students or newborn babies are counted.

Karr gets a lot of grief from his fellow councilmen every time there's a disturbance behind the prison's walls.

"Boy, you better calm down your constituents over there. Come on, councilman, take care of that problem," Karr says the councilmen joke.

AN ACCIDENTAL ADJUSTMENT

It wasn't always this way. For most of McAlester's history, the city excluded the prison population from its redistricting process. But when the city adopted a new charter in 2006, it accidentally undid that practice. And when the redistricting committee redrew the lines, Karr's ward was cut in half.

"Of course I opposed it," Karr says. "I said, 'You know, surely this isn't right.' But they said, 'Well our charter was written. That's why it's going to have to be.'"

Instead of 3,000 constituents, Karr now represents around 1,300. His ward is less than half the size of others in the city, so his vote on the city council is actually more powerful.

It might not be such a big deal in local politics, but Karr worries about the implications on a larger scale.

"When you're more powerful than a local city like a state representative or something, or a United States representative, it really wouldn't be fair with somebody like that," Karr says.

'FLUFF IT UP'

Prison gerrymandering, or drawing district lines with prisons inside so it benefits a particular party, is pretty common, according to the University of Oklahoma's Political Science chair Keith Gaddie. He argues it distorts the One Person, One Vote doctrine.

"This means that you need fewer actual voters in the district. And it also means that you can draw a district with relatively few voters in it but it meets the equal population criteria. But you've been able to fluff it up with a bunch of non-voters," he says.

Prisoners count for nearly 10 percent of Oklahoma House District 59's population in western Oklahoma, according to the Prison Policy Initiative (http://www.prisonpolicy.org/). Most were counted at the federal prison in El Reno and a private prison in Watonga, which has since closed.

"If you count a few people in the wrong place, that's not ideal," says Aleks Kajstura with the Prison Policy Initiative.

But as incarceration rates have grown, Kajstura says equal representation has become harder to maintain.

"Starting really with the 2000 census there's just been so many people incarcerated when that data is used for redistricting purposes, it really skews representation within a state and within counties and cities," Kajstura says.

Without those prisoners in House District 59, the district would not meet federal minimum population requirements.

REDISTRICTING WOES

Kajstura says this practice also causes headaches because prisons can close at any time. The one in Watonga shut down just weeks after the 2010 census.

"That particular facility where you are in on Census Day isn't representative with where you eat and sleep most of the time," Kajstura says.

Political science professor Keith Gaddie says the practice benefits rural areas. He's unsure how intentional it is, but he says a Democratic representative did approach him in 2002 during that year's reshuffling.

"He said, 'Dr. Gaddie, you know a perfect Democratic district is like a nursing home or a junior college tacked on to a prison, that way you don't need a lot of actual voters,'" Gaddie recalls.

As for McAlester's city troubles, citizens voted to amend the redistricting procedures to exclude the prisons. Robert Karr's hopeful the new ward lines will mean someone new could run for his post in 2018. He works full time, has a couple grandkids and is ready for a break.

"Hopefully, if we redistrict before then there may be some people who want to run, and I'll contribute to their campaign," Karr says.

As unfair as he says his pint-sized district is, Karr admits it's worked to his advantage: he receives half as many phone calls as his city council colleagues.

Oklahoma Engaged (http://www.oklahomaengaged.com/)is a collaborative series between KGOU and KOSU, with support from the Kirkpatrick Foundation (http://kirkpatrickfoundation.com/).

TAGS: GERRYMANDERING (HTTPS://WWW.KOSU.ORG/TERM/GERRYMANDERING)

REDISTRICTING (HTTPS://WWW.KOSU.ORG/TERM/REDISTRICTING)

PRISON SYSTEM (HTTPS://WWW.KOSU.ORG/TERM/PRISON-SYSTEM)

OKLAHOMA ENGAGED (HTTPS://WWW.KOSU.ORG/TERM/OKLAHOMA-ENGAGED)

PRISON GERRYMANDERING PROJECT

from the Prison Policy Initiative

Importing Constituents: Prisoners and Political Clout in Oklahoma

By Peter Wagner and Elena Lavarreda
September 21, 2009

Introduction

The Census Bureau counts Oklahoma prisoners as if they are residents of the communities where they are incarcerated, even though they can't vote and remain legal residents of the places they lived before they were incarcerated. Crediting thousands of mostly urban and minority men to the wrong communities has staggering implications for modern American democracy, which uses the Census to apportion political power on the basis of equal population. The process of drawing fair and equal legislative districts fails when the underlying data is flawed.

Crediting thousands of mostly urban and minority men to the wrong communities has staggering implications for modern American democracy.

The Census Bureau has always counted prisoners as residents of the prison location, but it is only recently that the prison population is large enough to effect legislative districting. As recently as 1980, the Oklahoma state prison system had 4,595 prisoners, compared to 5 times as many in 2000.[1]

The Census Bureau is counting this large population in the wrong place. A legal residence is the place that people choose to be and do not intend to leave; and because prison is not voluntary, it cannot be a residence.

Because prison is not voluntary, it cannot be a residence.

Today, our conception of democracy requires far more detailed and accurate data to reflect where the population — including people in prison — actually live. In almost every respect, except for how it counts people in prison, the Census Bureau's methodology has evolved to keep pace with the changing needs for its data. But now that such a large percentage of the population is incarcerated — and the 2010 Census is on the horizon — where the Census Bureau counts people in prison is a question of critical importance.

Redistricting and "One Person, One Vote"

A. Diluting votes in the State Legislature

Seven of Oklahoma's House districts meet federal minimal population requirements only because the state treats prisoners as residents of the district with the prison. To ensure that each resident has equal access to government, regardless of where she or he lives, federal law requires legislative districts each contain the same population. When districts are of substantially different sizes, the weight of each vote starts to differ: in under populated districts, each vote is worth more, and in overpopulated districts, a vote is worth less.

Seven of Oklahoma's House districts meet federal minimal population requirements only because the state treats prisoners as residents of the district with the prison.

By Oklahoma law, prisoners can't vote and remain residents of their home communities. But by relying on Census Bureau counts of prison populations to pad out legislative districts with prisons, Oklahoma

is inflating the votes of residents who live near prisons at the expense of every other resident in the state.

The Supreme Court ruled that the 14th Amendment's equal protection clause required that districts be drawn to be substantially equal in population.

The U.S. Supreme Court first declared that the "One Person, One Vote" principle applied to state legislative redistricting in the 1963 landmark case *Reynolds v. Sims*. [2] The Court struck down an apportionment scheme for the Alabama state legislature that was based on counties and not population. Under Alabama's apportionment plan, sparsely populated Lowndes County had the same number of state senators as densely populated Jefferson County. This gave the residents of Lowndes County 41 times as much political power as the residents of Jefferson County. *Reynolds v. Sims* barred this practice and put it plainly: "The weight of a citizen's vote cannot be made to depend on where he lives." The Supreme Court ruled that the 14th Amendment's equal protection clause required that districts be drawn to be substantially equal in population.

Subsequent U.S. Supreme Court cases defined the limits of "substantially equal." In *White v. Regester* [3], the Court ruled that the state of Texas was not required to justify how it drew lines resulting in an average district deviation of less than 2% and a maximum deviation of 9.9%. Allowing these small differences in district population sizes helps to protect other legitimate state interests, such as keeping communities of interest in the same legislative district. Today, most states draw their districts so that the smallest district is no more than 5% smaller, and the largest no more than 5% larger, than the average district. This keeps the difference between the largest and smallest district within 10%.

In Oklahoma, a State House of Representatives district is supposed to contain 34,165 people, plus or minus 1,708 people. Each Oklahoma House district meets the federal standard of population equality, but only because prisoners were counted in the wrong place.

For example, the 55th House District in Washita, Kiowa, Caddo and Canadian Counties has an actual population that is 307 smaller than it should be, well within federal limits. However, the large federal and private prisons in the district make the actual population far too small. The actual population is 2,901 (8.49%) fewer than the average district. Ironically, the majority of the people incarcerated in the federal prisons and in the private Great Plains Correctional Facility are counted not just in the wrong district, but in the wrong state. (To be sure, a very small portion of the district's incarcerated population is in local county jails and are likely residents of the district; but the overwhelming majority are from other states or districts.)

93 residents in district 22 are given the same political clout as 100 residents elsewhere.

Similarly, district 22 in Murray, Garvin, Pontotoc, McClain, and Cleveland counties was drawn to contain slightly more population than it was required, but the massive prison populations mean that the number of actual residents in the district is 7.3% smaller than it should be. This gives every group of 93 residents in the districts as much political clout as 100 residents anywhere else in the state.

District	Counties	Representative (Aug. 2009)	Population (Census)	Prisoners	Deviation from ideal population, by Census counts	Percent deviation from ideal population, by Census counts	Deviation from ideal population without using prisoners as population	Percent deviation from ideal without using prisoners as population	Prisons
13	Muskogee (part), Wagoner (part)	Jerry McPeak (D)	34,459	1,829	-294	-0.9%	-2,123	-6.21%	Muskogee Community Correctional Center, Muskogee County/City Detention Center, Jess Dunn CC, Dr. Eddie Warrior CC, Muskogee Community Correctional Center
18	Pittsburgh (part), McIntosh (part)	Terry Harrison (D)	34,389	2,111	-224	-0.7%	-2,335	-6.83%	Jackie Brannon Correctional Center, Pittsburgh County Jail, Oklahoma State Penitentiary, Pittsburgh County Jail, McIntosh County Jail
22	Murray, Garvin (part), Pontotoc (part) McClain (part), Cleveland (part)	Wes Hilliard (D)	34,099	2,569	66	0.2%	-2,503	-7.33%	Lexington Assessment and Reception Center, Joseph Harp CC, Murray County Jail, McLaine County Jail
55	Washita, Kiowa (part), Caddo (part), Canadian (part)	Vacant pending special election	34,472	2,594	-307	-0.9%	-2,901	-8.49%	FCI El Reno, Camp El Reno, Great Plains Correctional Facility, Hobert Community Work Center, Canadian County Jail, Washington County Jail, Kiowa County Jail
63	Tillman, Comanche (part)	Don Armes (R)	34,448	2,081	-283	-0.8%	-2,364	-6.92%	Frederick Community Work Center, Lawton Correctional Facility, Lawton Community Correctional Center,

									Tillman County Jail
88	Oklahoma (part)	Al McAffrey (D)	34,153	2,427	12	0.0%	-2,415	-7.07%	Oklahoma City Jail, Oklahoma Halfway House, Carver CC
90	Oklahoma (part)	Charles Key (R)	34,205	1,753	-40	-0.1%	-1,793	-5.25%	FTC Oklahoma City

Table 1. Seven House districts meet federal minimum population requirements only because they include incarcerated people as local residents. In these seven districts, the presence of the prisons in the Census data enables every group of 92 to 95 residents to claim as much political power in the State House as each group of 100 residents everywhere else in the state.

Seven legislative districts lack sufficient population to meet accepted one-person, one-vote standards.

Oklahoma's decision to rely on flawed Census counts of the prison population artificially enhances the districts with prisons and dilutes the voting power of everyone else. These seven legislative districts lack sufficient population to meet accepted one-person, one-vote standards without counting disenfranchised prisoners as part of their population base. At the same time, heavily minority urban districts would be entitled to additional representation if prisoners were counted as residents of their home communities for purposes of redistricting.

B. Diluting Votes on the Local Level

54 voters in district 3 have the same voting power as 100 voters in the other districts.

The Census Bureau's prison miscount has an even more pronounced impact on fair districting in county boards of commissioners. Because county board districts tend to be relatively small, a single prison can have a significant impact. The most dramatic example is in Alfalfa County with three districts of about 2,000 people. However, when drawing the district lines, the county included the 981 people incarcerated at the James Crabtree Correctional Center in district 3. More than 46% of district 3 is people who are not residents of the county and — even if they could vote — would not be allowed to participate in local elections. Consequently, 54 voters in this district have the same voting power as 100 voters in the other districts.

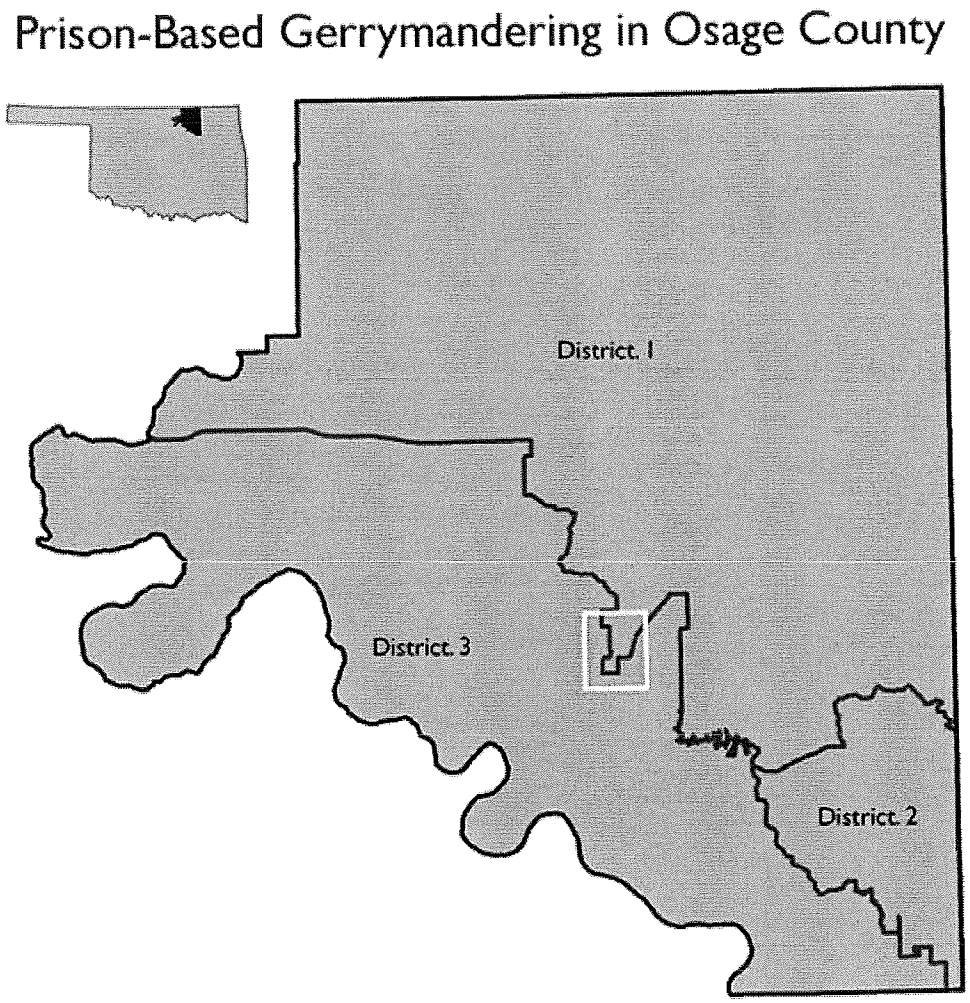
16 Oklahoma counties have county board districts where substantial portions of the population is not local residents but incarcerated people from other parts of the state. (See Table 2.) The import of prison-based gerrymandering can also be seen graphically in Osage County, where District 1 goes miles out of its way to include the Conner Correctional Facility, splitting it from the rest of the City of Hominy in District 3. (See Figure 3.)

Fortunately, one Oklahoma county has shown that it is not powerless to fix the Census Bureau's mistakes. Greer County, which has a resident and prison population very similar to Alfalfa County, simply ignored the prison population when drawing its county board districts. As a result, each resident of Greer County has the same access to county government regardless of whether she or he lives immediately adjacent to a large prison.

County	Most distorted district	District size	Prison population	Vote enhancement	How do votes compare to votes in other districts in the county?
Alfalfa	3	2,116	981	46.36%	Every 54 residents in district 3 have as much power as 100 residents in other districts.
Atoka	1	4,407	1,409	31.97%	Every 68 residents in district 1 have as much power as 100 residents in other districts.
Beckham	1	6,720	1,534	22.83%	Every 77 residents in district 1 have as much power as 100 residents in other districts.
Blaine	3	4,046	1,329	32.85%	Every 67 residents in district 3 have as much power as 100 residents in other districts.
Caddo	1	10,192	762	7.48%	Every 93 residents in district 1 have as much power as 100 residents in other districts.
Canadian	3	28,972	1,671	5.77%	Every 94 residents in district 3 have as much power as 100 residents in other districts.
Comanche	1	39,428	2,136	5.42%	Every 95 residents in district 1 have as much power as 100 residents in other districts.
Craig	2	5,044	410	8.13%	Every 92 residents in district 2 have as much power as 100 residents in other districts.
Hughes	1	4,780	968	20.25%	Every 80 residents in district 1 have as much power as 100 residents in other districts.
Jefferson	3	2,273	191	8.40%	Every 92 residents in district 3 have as much power as 100 residents in other districts.
Muskogee	3	23,713	1,549	6.53%	Every 93 residents in district 3 have as much power as 100 residents in other districts.

Okfuskee	1	4,085	675	16.52%	Every 83 residents in district 1 have as much power as 100 residents in other districts.
Osage	1	14,494	1,310	9.04%	Every 91 residents in district 1 have as much power as 100 residents in other districts.
Pittsburg	2	14,929	2,082	13.95%	Every 86 residents in district 2 have as much power as 100 residents in other districts.
Woods	1	3,082	431	13.98%	Every 86 residents in district 1 have as much power as 100 residents in other districts.
Woodward	3	6,286	514	8.18%	Every 92 residents in district 3 have as much power as 100 residents in other districts.

Table 2. Sixteen Oklahoma counties where prison populations are large portions of individual county districts.



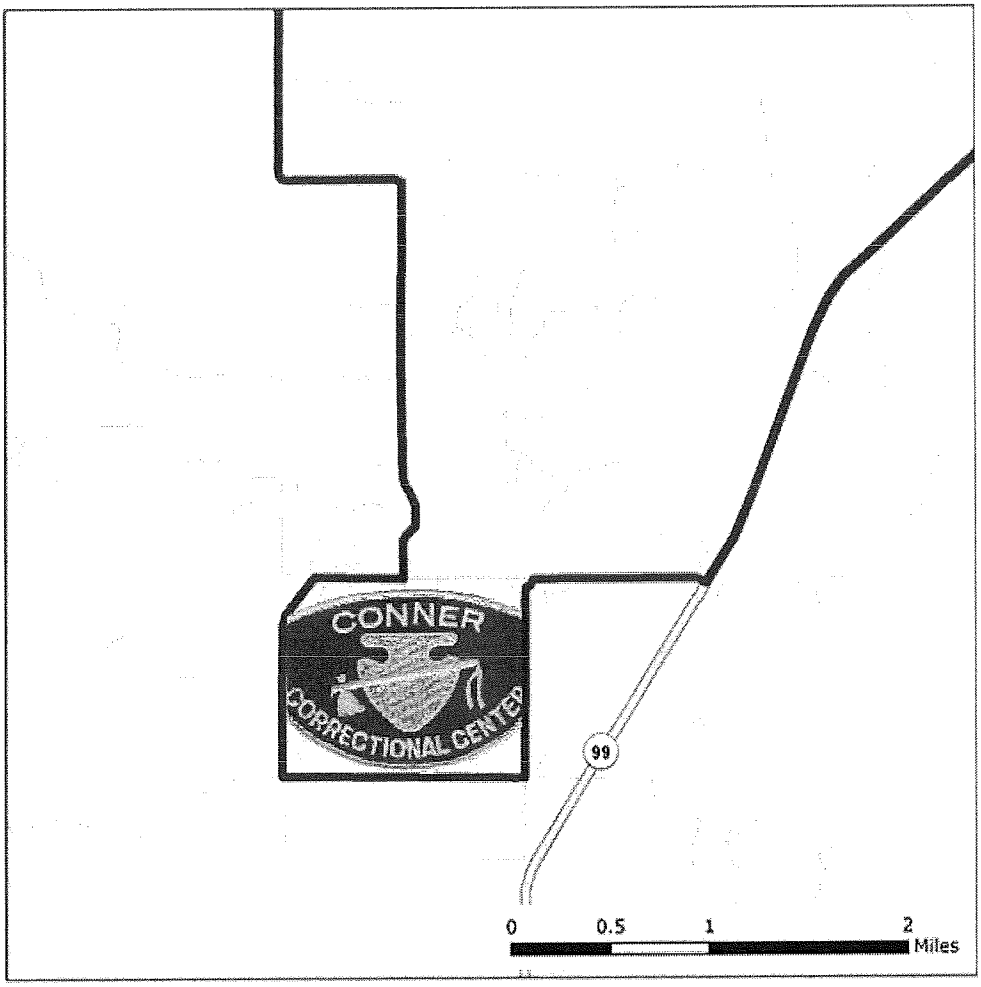


Figure 3. *The import of prison-based gerrymandering can also be seen graphically in Osage County, where District 1 goes miles out of its way to include the Conner Correctional Facility, splitting it from the rest of the City of Hominy in District 3.*

Prison popluations also distort City Council districts. The City of McAlester avoids prison-based gerrymandering by excluding prison populations from their data when redistricting the City Council. The cities of Cushing, El Reno, Lawton, Sayre, Vinita, Watonga, Waurika all risk distorting their City Council districts with prison populations unless they follow McAlester's example and adjust the redistricting data.

Recommendations

The Census Bureau's decision to credit thousands of disenfranchised non-residents to the Census blocks with prisons creates serious problems for Oklahoma. When state and county legislators use Census counts of prisoners to pad out the population of certain legislative districts where they do not reside, the basic democratic principle that everyone must be counted and represented in the right place is violated.

The Census Bureau needs to change its outdated method of counting people in prison, and state and local officials should encourage that change for future Censuses. With time running out before the 2010 Census and with

With time running out before the 2010 Census, the state should explore ways that it can

Oklahoma's tight redistricting schedule, the state should explore ways that it can make up for the Census' data shortcomings and help protect the integrity of the line drawing process at the state and local level. There are four ways the state can do this: by advocating for change at the Census Bureau, by changing where incarcerated people are counted in the redistricting data, by drawing all districts without the prison populations, and by requiring counties to draw districts without prison populations.

make up for the Census' data shortcomings.

A. Ask the Census Bureau to change where it counts people in prison.

The ideal place to fix the prisoner miscount is at the U.S. Census Bureau. Historically, the bureau has been responsive to the needs of its data users when deciding how to count the population, so Oklahoma state and local officials should lobby the Bureau directly. Oklahoma's short redistricting timeline makes the states particularly dependent upon Census Bureau cooperation. Further, change at the Census Bureau would eliminate any possible legal conflict between federal redistricting law which requires equal districts of actual population without mandating the use of the federal Census with the Oklahoma State Constitution which declares a role for the "Federal Decennial Census". Okl. Const. Art V. S9A and S10A (a).

While insufficient time remains for the Census Bureau to change where incarcerated people are counted in 2010, Oklahoma should start asking the Bureau to make the change in future Censuses. In the mean time, in order to protect its next round of redistricting, Oklahoma must explore other options at the state level.

B. Oklahoma can adjust the U.S. Census' count of prisoners prior to redistricting to count incarcerated people at home.

Oklahoma can fix the Census data by collecting the home addresses of people in prison and then adjusting the U.S. Census counts prior to redistricting. Legislation with these goals has been introduced in New York[4] and Texas and is patterned on how Kansas adjusts the federal census counts of military personnel and students.[6]

This plan would require the state to determine which correctional populations it wishes to adjust the residence for and develop a plan to collect that information on Census day in April 2010. (See sidebar, A short primer on the types of correctional facilities in Oklahoma to guide the development of state-based solutions to the Census Bureau's prison miscount.) The state would have to process this data and prepare to subtract incarcerated people from the Census blocks that contain prisons and add them to their home blocks.

C. Oklahoma can draw state and/or county districts without the prison populations.

Alternatively, states can ignore the prison populations when drawing their state district lines. This approach would not credit incarcerated people back to their homes, but it would end the practice of crediting them to different communities of interest in the wrong part of the state. It has been endorsed as a viable interim solution by the National Research Council of the National Academies, the editorial board of the *New York Times*, and a state constitutional amendment with this approach is currently pending in Wisconsin.[8]

The advantage of this method is that it can be enacted relatively late, but Oklahoma's compressed state legislative redistricting timeline will require some advanced planning so that the prisons can be identified and removed in the redistricting data published by the Bureau.

The Census Bureau's PL94-171 Redistricting Data File will contain just 5 tables. Four of race, ethnicity and age information, and one with information about vacant housing. Correctional facilities will not be labeled as correctional facilities in this file, so the state must be prepared to find the facilities on the census maps and to know how much of the population to remove. Unfortunately, prisons often share a census block with other populations, so the state would need to collect the population count of each facility on April 1 in order to adjust the block counts when the redistricting data is made available in March 2011.

D. Oklahoma should require counties to draw districts without regard to prison populations and provide them with the technical resources to do so.

Drawing fair districts requires modifying the Census data to ignore the prison.

The largest impact of prison based gerrymandering is at the county level, and that is where it should be the easiest to fix. Rather than draw a district that was half prisoners, Greer County had the right idea: drawing fair districts requires modifying the Census data to ignore the prison. Starting at the county level would address the largest aspect of the prison-based gerrymandering problem, and would be the most legally and technically straight forward.

Unlike the state house and senate districts, the state constitution does not provide a specific mention of the data source to be used for districting, thereby giving more flexibility to the counties. Further, because the counties have a slower redistricting schedule than the state, counties have additional, simpler options, for finding and removing the prisons from the redistricting data.

The state should, by the means discussed above or through distribution of the Summary File 1 prison counts released in the summer of 2011, encourage or require counties to ignore the prison populations when drawing their districts.

There is great precedent for this approach. Colorado requires counties with prisons to remove the prison population prior to redistricting[9], and Virginia law encourages it[10]. Many other counties decide on their own to exclude the prison population prior to redistricting. In Essex County, New York, the county Board of Supervisors enacted a law that mandated excluding the prisons when apportioning its government because "the inclusion of these federal and state correctional facility inmates unfairly dilutes the votes or voting weight of persons residing in other towns within Essex County."[7] But given the difficulty in doing so, the state should assist the process of helping the counties draw fair districts.

About the authors

Peter Wagner is an attorney and Executive Director of the Prison Policy Initiative. In 2002, he authored the first district-by-district analysis of the impact of Census counts of prisoners on state legislative redistricting, Importing Constituents: Prisoners and Political Clout in New York (2002). He has presented his research at national and international conferences and meetings, including a Census Bureau Symposium, a meeting of the National Academies, and keynote addresses at Harvard and Brown Universities. His publications include, with Rose Heyer, Too Big to Ignore: How Counting People in Prisons Distorted Census 2000 (2004) and, with Eric Lotke, Prisoners of the Census: Electoral and Financial Consequences of Counting Prisoners Where They Go, Not Where They Come From [PDF] (2005).

Elena Lavarreda is a 2008 graduate of Smith College and a policy associate at the Prison Policy Initiative.

About the Prison Policy Initiative

The Massachusetts-based non-profit, non-partisan Prison Policy Initiative documents the impact of mass incarceration on the larger society. Focusing on a once-obscure Census Bureau glitch that counts people in prison where they are temporarily held instead of the communities they come from; the Prison Policy Initiative demonstrates how the prison system reaches beyond prisons to punish people and communities not under criminal justice system control. The organization's work to change how people in prison are counted has won the support of the *New York Times* editorial board and the Census Bureau's own advisors at the National Research Council.

Endnotes

[1] Oklahoma Sentencing Commission, Oklahoma Prison Population Projection for FY'08 and Beyond [PDF] May 7, 2007

[2] *Reynolds v. Sims*, 377 US 533 (1964)

[3] *White v. Regester*, 412 US 755 (1973)

[4] New York Senate Bill S1633 introduced by Senator Eric Schneiderman is the ideal version of this legislation as it includes a specific provision that would apply the census adjustment not only to senate and assembly districts, but to county districts as well.

[6] In Kansas, "Senatorial and representative districts shall be reapportioned upon the basis of the population of the state adjusted: (1) To exclude nonresident military personnel stationed within the state and nonresident students attending colleges and universities within the state; and (2) to include military personnel stationed within the state who are residents of the state and students attending colleges and universities within the state who are residents of the state in the district of their permanent residence." KS CONST. art. 10 S 1.

[7] Essex County Local Law No 1 of 2003

[8] Wisconsin AJR-63 introduced by Representatives Kessler, Black, Grigsby, Turner and A. Williams, June 22, 2009.

[9] Colo. Rev. Stat. sec. 30-10-306.7 (5)(a)

[10] Va. Code Ann. § 24.2-304.1

'Your Body Being Used': Where Prisoners Who Can't Vote Fill Voting Districts

December 31, 2019 · 5:00 AM ET
Heard on Morning Edition

HANSI LO WANG | KUMARI DEVARAJAN

6-Minute Listen

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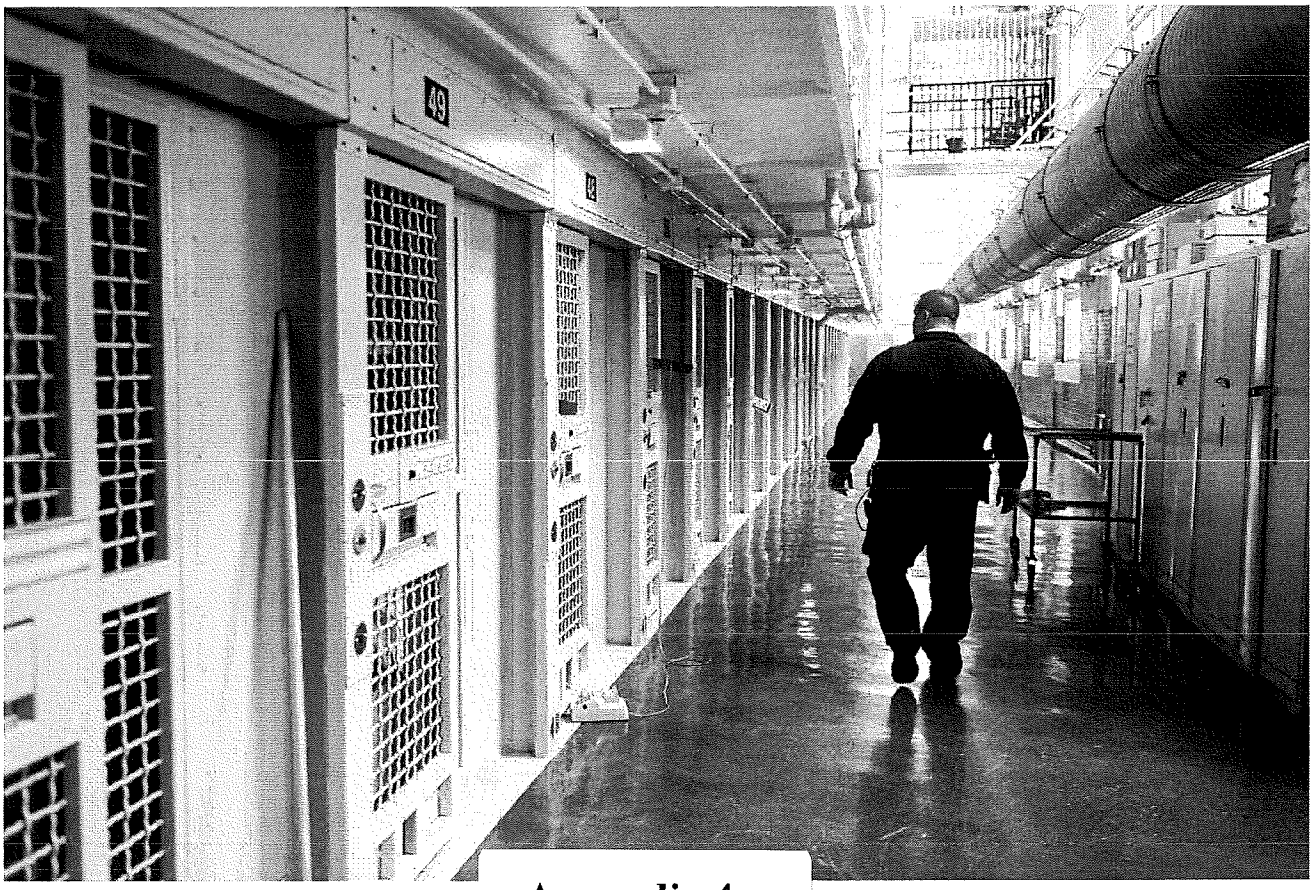


Appendix 4

Lt. Keith Immerfall walks past prison cells at Waupun Correctional Institution, a maximum security prison in Waupun, Wis. If the more than 1,200 prisoners at the facility are still incarcerated there on April 1, the next Census Day, the Census Bureau will officially consider them residents of Waupun for the 2020 national head count.

Lauren Justice for NPR

Robert Alexander has been away from home for more than a decade. His days and nights are spent locked up behind walls topped with barbed wire.

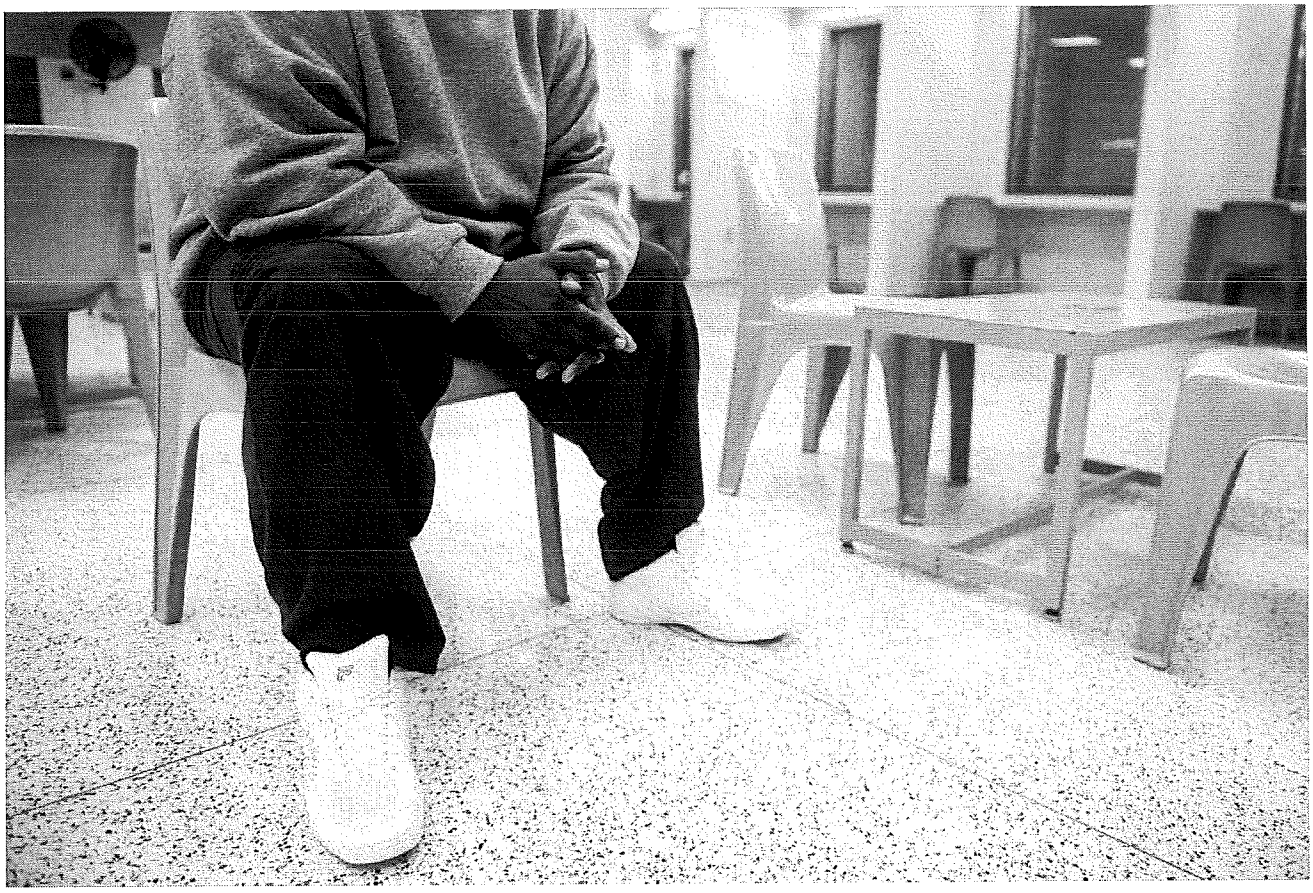
"Prison kind of gives you that feeling that you're like on an island," says Alexander, 39, who is studying for a bachelor's degree in biblical studies while serving his third prison sentence.

Clad in an oversized gray sweatshirt under the fluorescent lights inside the visiting room of Wisconsin's oldest state prison, he is more than 70 miles from his last address in Milwaukee.

"You don't feel like a resident of anything," he adds.

But if Alexander and his more than 1,200 fellow prisoners are still incarcerated at Waupun Correctional Institution next Census Day — April 1 — the Census Bureau will officially consider them residents of Waupun, Wis., for the 2020 national head count.

That's because, since the first U.S. census in 1790, the federal government has included incarcerated people in the population counts of where they're imprisoned. This technical detail of a little-known policy can have an outsized impact on prison towns across the U.S. for the next decade.



While serving time at Waupun Correctional Institution, Robert Alexander is working on a bachelor's degree in biblical studies. Since the first U.S. census in 1790, the federal government has included incarcerated people in the population counts of where they're imprisoned.

Lauren Justice for NPR

In many cases, rural, predominantly white towns see their population numbers boosted by population counts from prisons disproportionately made up of black and Latinx people.

In turn, states, which control how voting districts are drawn, and local governments can use those numbers to form districts filled predominantly with people who are locked behind bars and cannot vote in almost all states. Maine and Vermont are the exceptions.

Officials in some prison towns have come up with creative ways to avoid forming voting districts made up primarily of prisoners. But in many others, political lines are drawn around prisons in a way that critics deride as "prison gerrymandering."

In some prison towns, officials have come up with creative ways to avoid forming voting districts made up primarily of incarcerated people.

Tap a small map to see how local governments are forming their boundaries.

Florence, Ariz. | Grafton Village, Ohio | Oldham County, Ky.

Florence, Ariz.

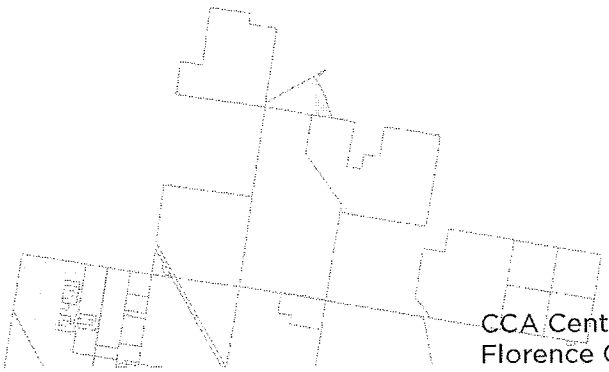
TOTAL POPULATION IN 2010

Incarcerated: **17,700** Not incarcerated: **7,836**

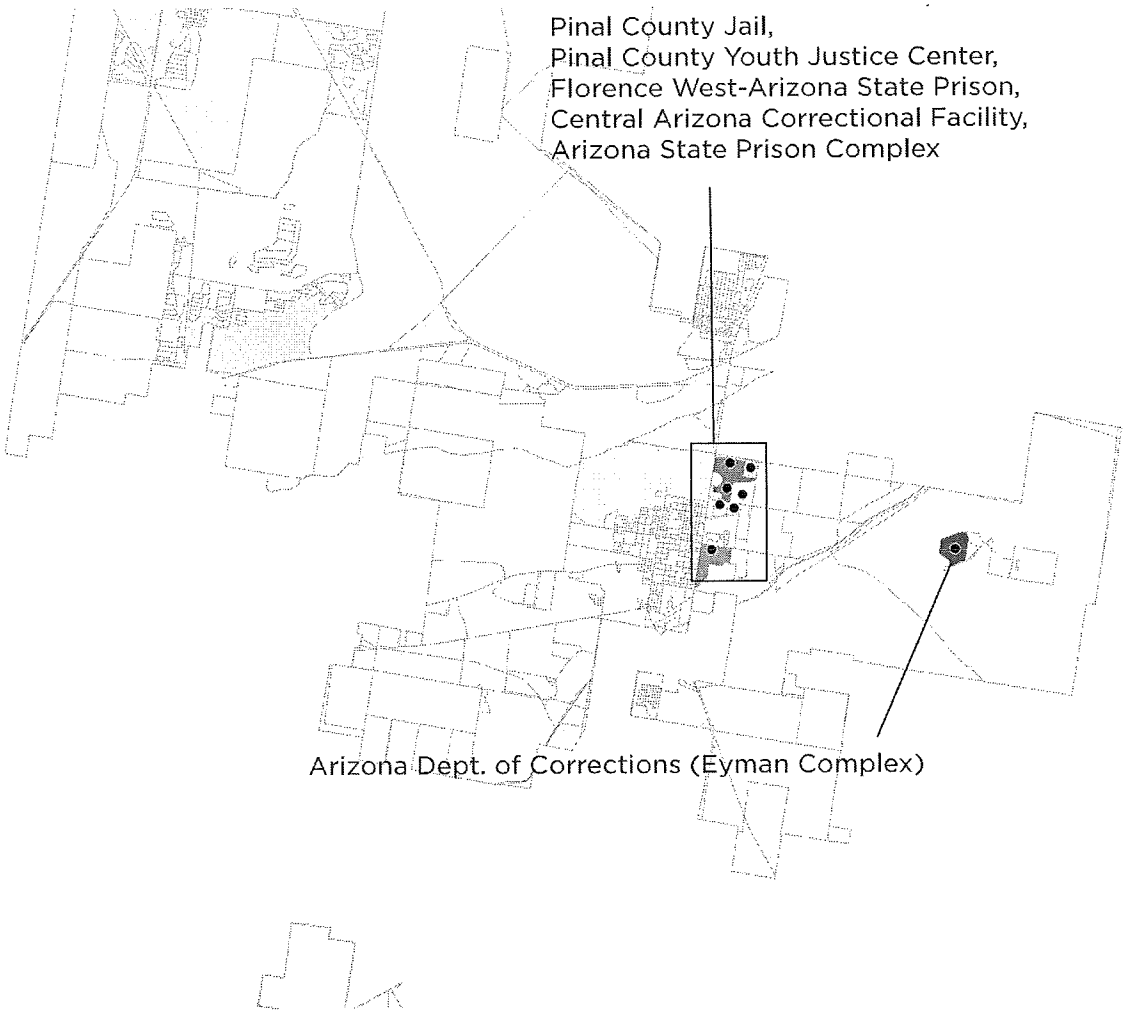
Florence avoids the issue of drawing districts around prisons by holding at-large elections, where all voters choose candidates from the same pool. The town does, however, acknowledge that it benefits from the census's counting incarcerated people in its population, since local governments often receive grant money determined by those official counts.

POPULATION BY CENSUS BLOCK

0 5,400



CCA Central Arizona Detention Center, Florence Correctional Center,



Split along partisan lines

A recent study about Pennsylvania's state legislative districts by Villanova University associate professors highlights the impact this process can have on the political voice of incarcerated people's home communities.

It found a "substantial likelihood" that Philadelphia would gain an additional majority-minority district for Pennsylvania's state house if prisoners incarcerated in the state were counted as residents of their last known addresses.

"The incarcerated are not only missing from their communities," the study's authors, Brianna Remster and Rory Kramer, wrote, but "they are also advantaging other communities."

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Still, the issue of where to count prisoners for census numbers has been split largely along partisan lines. Most

On "Prison Gerrymandering"

CODE SWITCH

Political Prisoners?

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supporters who want to change the way incarcerated are counted are Democrats, while Republicans generally want to keep things the way they are.

In 2015, when the Census Bureau was collecting public comments about its rules for counting people in prisons, Thomas Hofeller — a prominent Republican redistricting strategist who died in 2018 — warned against adjusting prisoners' numbers.

Hofeller expressed concern that "the actual effect on reapportionment and redistricting is not clearly known for individual states," according to a document Hofeller's daughter, Stephanie, provided to NPR that was copied from his hard drives.

"This change is being encouraged by Democratic or Liberal organizations and could involve the Census Bureau in yet another political conflict," Hofeller wrote in the Microsoft Word document, first reported by The New Yorker.

Limestone brick archways mark Waupun Correctional Institution's main entrance. Many rural, predominantly white prison towns see their population numbers boosted by prison populations disproportionately made up of black and Latinx people.

Lauren Justice for NPR

What worked in 1790 "just doesn't work anymore"

The following year, the bureau received another round of public comments on the issue. More than 99% of the close to 78,000 comments collected in 2016 "suggested that prisoners should be counted at their home or pre-incarceration address," the bureau reported in a Federal Register notice.

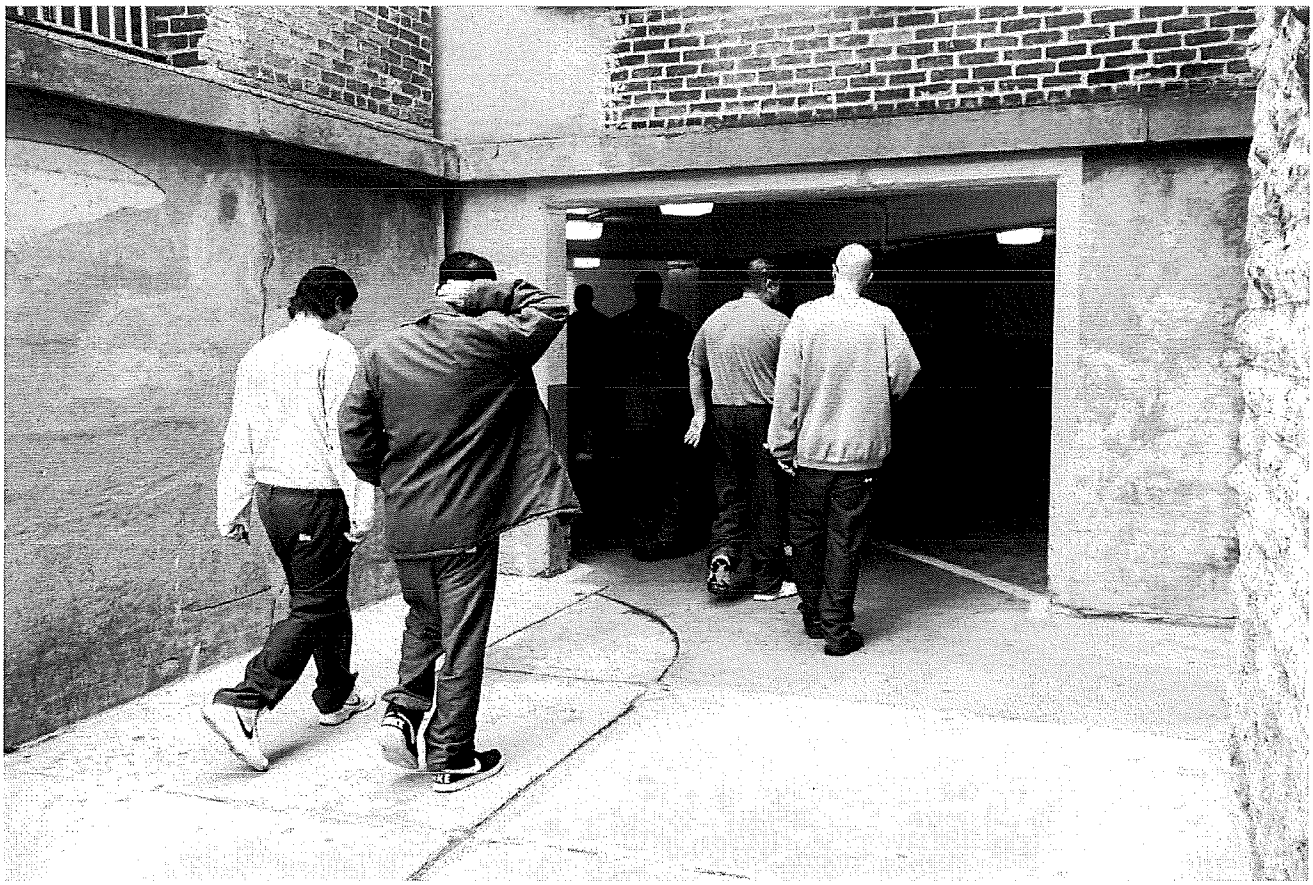
The Census Bureau has said, however, it has no plans to change its policy for the 2020 count.

"Counting prisoners anywhere other than the facility would be less consistent with the concept of usual residence, since the majority of people in prisons live and sleep most of the time at the prison," the bureau announced in 2018.

But some critics say that policy has become out-of-date since it was first implemented for the 1790 census.

"What has changed is just the massive scale of incarceration in the U.S. What worked for the country in 1790 just doesn't work anymore in terms of data methodology," says Aleks Kajstura, legal director of the Prison Policy Initiative, a research and advocacy group campaigning to change how incarcerated people are counted. "Even up until the 1970s, the incarcerated population was low enough that it did not impact redistricting when people were counted in the wrong place."

Kajstura also points out that many prisoners are likely to be released or moved to another facility after they're counted for the census. "This facility that they happen to be incarcerated on Census Day is in no way reflective of the reality of where they actually even live and sleep most of the time even by the Census Bureau's own guidelines," Kajstura says.



Prisoners pass through a courtyard at Waupun Correctional Institution. Officials in some prison towns have come up with creative ways to avoid forming voting districts made up primarily of prisoners. But in many others, political lines are drawn around prisons in a way that critics deride as "prison gerrymandering."

Lauren Justice for NPR

A piecemeal approach

With the bureau refusing to change its policy, state lawmakers, civil rights groups and other advocates have turned to a piecemeal approach to change how prisoner counts are used to redraw state and local voting districts by advancing legislation and fighting in court.

In May, Nevada and Washington joined California, Delaware, Maryland and New York in passing laws since 2010 requiring relocating prisoners' numbers from where they're incarcerated to their last known home addresses for redistricting.

After the 2020 census, the bureau is planning to help those states recalculate their counts in time for redistricting by releasing data about incarcerated people earlier than it did after the 2010 count.

In Connecticut, state officials are facing a lawsuit filed by the NAACP after they used 2010 census numbers counting prisoners where they're imprisoned to redraw voting maps. The country's oldest civil rights organization is arguing in court that the state's redistricting plan has inflated the voting strength of districts of predominantly white voters and violated the 14th Amendment's "one person, one vote" principle, which requires districts to have about the same number of people in them.

"There's no comment"

In Wisconsin — where around 1 in 8 black men age 64 and younger, is behind bars, the highest incarceration rate for black men in the country — Democratic state lawmakers introduced a bill in September that would relocate prisoner numbers for redistricting.

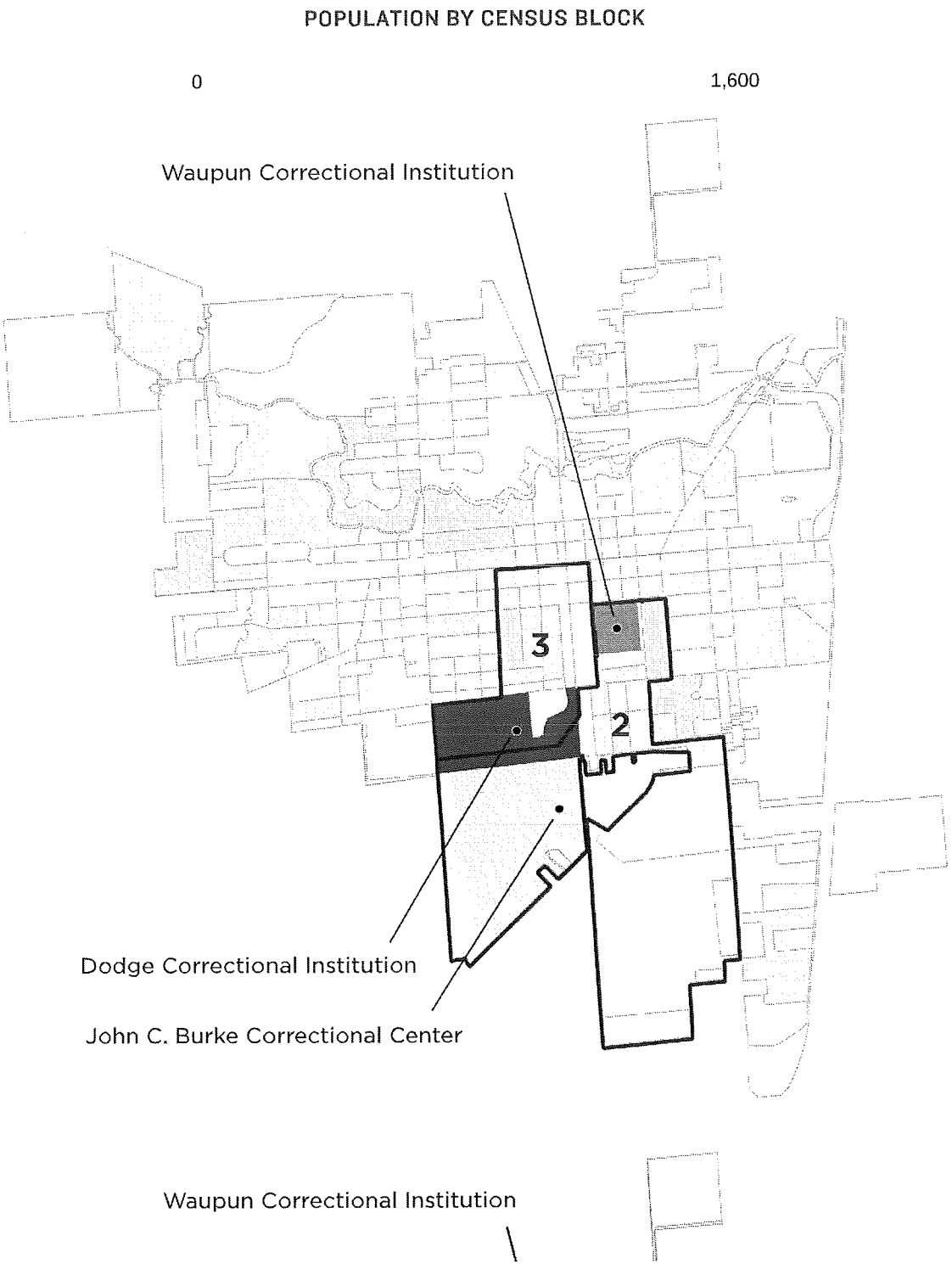
If it becomes a law by the time Wisconsin's political maps have to be redrawn after the upcoming census, a major shift in local political representation may be coming to prison towns such as Waupun.

Waupun, Wis.

TOTAL POPULATION IN 2010

Incarcerated: **3,037** Not incarcerated: **8,303**

Waupun is home to three state prisons. The city's administrator, Kathy Schlieve, says it is following "the letter of the law" by drawing a map that includes two local voting districts — districts 2 and 3 — that are made up mostly of incarcerated people who cannot vote.



In this rural, predominantly white town located northwest of Milwaukee, around 1 in 4 people is incarcerated. It is home to three state prisons, including the facility where every adult male prisoner sentenced to Wisconsin's prison system is processed, Dodge Correctional Institution.

Together, the three facilities in Waupun house more than 3,000 incarcerated people convicted of a felony, who cannot vote while behind bars. These prisoners make up the majorities in two of the town's voting districts represented by alderpeople on the town's common council.

According to Waupun's official website, alderpeople rely on "input from residents" to "ensure a citizen-centered process" when they're making decisions on behalf of the town.

But the elected officials of Waupun's two majority-prisoner districts told NPR that they have never visited the prisons in the areas they represent.

"There's no reason to communicate on property I don't have access to," Alderperson Ryan Mielke, who was reelected this year with 43 votes to represent District 3 — where about 61% of his constituents are incarcerated and cannot vote, according to the Prison Policy Initiative's analysis.

Asked whether he ever wanted to know how many people are in the prison he represents, Mielke replied: "There's no comment."

A spokesperson for Wisconsin Department of Corrections told NPR that elected officials are welcome to visit its facilities. "We have state senators and representatives come through a number of our institutions pretty regularly," said spokesperson Clare Hendricks. "We're welcome to it."

Together, three state prisons in Waupun house more than 3,000 incarcerated people who were convicted of a felony and cannot vote while behind bars. These prisoners make up the majorities in two of the town's voting districts.

Lauren Justice for NPR

"Almost like your body being used"

Alderperson Peter Kaczmarski represents District 2, where prisoners at Waupun Correctional Institution — a maximum security prison that houses people convicted of violent crimes — make up about 76% of his constituents. Compared with other constituents in his district, Kaczmarski says representing constituents who are behind bars is very different.

"You almost have to think for them because you don't, perhaps, have that day-to-day interaction," said Kaczmarski, who lives down the street from Waupun Correctional.

Robert Alexander — who is serving time in Waupun, about an hour-and-a-half drive away from where he was living in Milwaukee — and the three other prisoners NPR interviewed at the facility said they were not previously aware that Kaczmarski was elected to represent them.

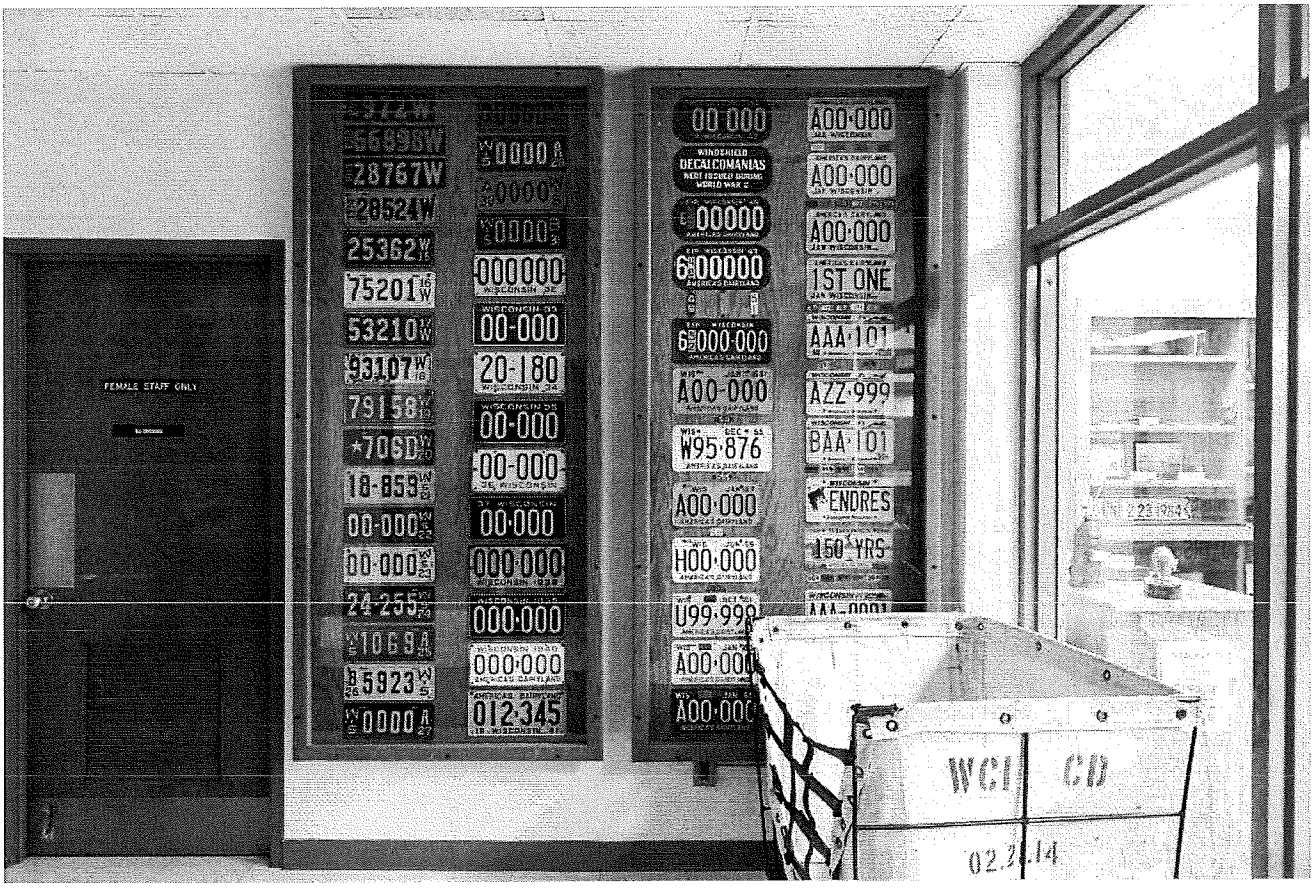
"There's no way that he can say what we feel unless he decides to come in and talk to us," he said.

It doesn't sit well with Alexander that he can be counted for political representation in a place he doesn't consider his residence.

"It's almost like your body being used," Alexander said.

An uneasy relationship has been playing out in Waupun as the town's officials try to keep its prisons in the background and attract more tourists and business developers with a rebranding effort featuring taglines such as "Naturally Adventurous."

The three prisons have been a main driver of Waupun's economy for decades. But Kathy Schlieve, Waupun's city administrator, said officials see a trade-off from having incarcerated people included in the town's population count.



Wisconsin's state license plates are made by incarcerated people at Waupun Correctional Institution, where prisoners began manufacturing plates in the early 1900s. Waupun's three prisons have been a main driver of the town's economy for decades.

Lauren Justice for NPR

"It really dilutes the socioeconomic profile of the community," Schlieve said. "Our postsecondary attainment looks different than maybe what it is for the average citizen here, as does things like our average household income. So even how we think about recruiting retail, it becomes a much bigger challenge when the data's not depicting the reality of the community that's out spending the dollars."

The town's officials commissioned a study published in 2009 in order to produce a profile showing what Waupun's demographics would look like if the prison population was removed.

Still, Schlieve said that prisoners should be counted as residents of Waupun, in part because the town is providing prisoners with ambulances, as well as police and fire department services.

"What I would say is purely because we are providing those protective services and infrastructure pieces, I think it's appropriate as it is," Schlieve says. "I think we will follow the letter of the law."

Kajstura, the Prison Policy Initiative's legal director, says that a 1981 legal opinion by Wisconsin's then-state attorney general puts towns like Waupun in "a bind" in terms of how it has to redraw voting districts. For state and local redistricting, "institutional populations cannot be excluded" from the population count produced by the Census Bureau, according to the opinion.

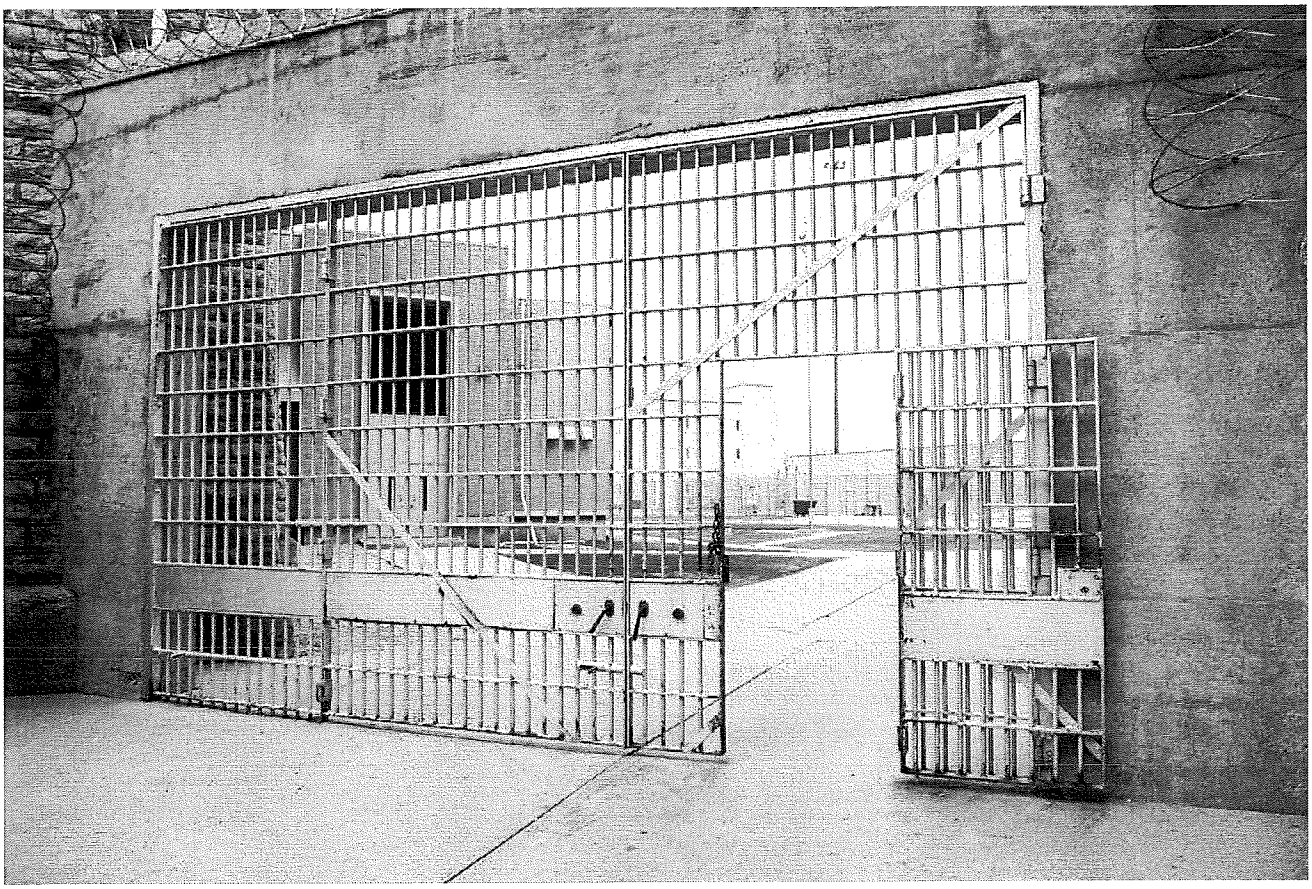
But Schlieve said in a written statement that Waupun is interpreting the bureau's "usual residence" rule to mean that the town has to "count inmates in our community."

In other prison towns around the U.S., however, local officials have devised ways to avoid creating voting districts made up primarily of prisoners. In Kentucky's Oldham County — where two of its districts contain prisons — incarcerated people were excluded from the 2010 census numbers used to redraw the voting map. Officials in Florence, Ariz., avoid the issue altogether by holding at-large elections that allow all voters to choose candidates from the same pool.

Stuck in limbo

Maryland and New York are the first states in the country to relocate their numbers of incarcerated people back to the last known addresses of the prisoners.

After the 2010 census, those states underwent a complicated process to make sure prisoners were matched with the correct home addresses, according to a study by New York Law School. Four additional states — California, Delaware, Nevada and Washington — plan to implement similar changes after the 2020 count.



Unlike in Waupun, local officials in other prison towns have devised ways to avoid creating voting districts made up primarily of prisoners.

Lauren Justice for NPR

But for some prisoners, determining where "home" is can be complicated. After serving their time, many incarcerated people, uprooted for years, do not return to where they were living before they were locked up.

"Wherever they want to send you, they send you. Wherever they want you to be, you be. So it's not a home," says Alexander, who is not expected to be released from Waupun Correctional Institution until 2030. "You're never in a position where you make this home because you're always planning to exit."

NPR data editor Sean McMinn and former intern Koko Nakajima contributed to this report.

So, How do You Handle Prisons?

Mon Mar 01 2010

ROBERT GROVES

In my travels around the country, I get a lot of questions about unusual housing situations and how the 2010 Census will enumerate people who live there. A common one concerns prisons.

The decennial census has the goal of counting everyone living in the country in the "right" place. That is, it is insufficient for us to have a perfectly accurate count of the total population if we cannot place each person enumerated in some location. (This burden flows from the need to reapportion the House across states and then to redistrict the states based on counts down to the block level.)

Since the Census Act of March 1790, we have placed each enumerated person at their "usual residence." With some persons, where they are living now is not where they might think of themselves usually living. For example, I've blogged earlier about how many of the victims of Hurricane Katrina think of themselves as living on the Gulf Coast even though, since the event,

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Appendix 5

they've lived far inland. I talked about how some college students in dormitories think of themselves as really living in their parental home, even though they only spend summers there. So too, many prisoners may think of themselves as living somewhere other than prison.

For some prisoners, however, they are only temporarily incarcerated. For persons in short-term jails, awaiting a hearing, we direct that the person should be included at their residence that they usually occupied before the jail incident. For those in hospitals for a short-term stay we direct that they be counted among their usual household.

Thus, conceptually there needs to be some time-based cutoff. The Census Bureau rules note that if in the last year the majority of the months were spent at a residence, then the person should be included in that residence's count. Could such a rule be used for prisoners?

One can easily see that the problem is a logistical one. There are logistical issues and conceptual issues:

Enumerating in prisons. We seek to have each prisoner fill out an individual census form, but we don't succeed in all institutions. In some

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prisons with very large security issues, prison management directs us to use the administrative records of the institution to enumerate.

Defining "usual residence" outside the prison. There are several optional definitions that could be used:

- Where the prisoner lived immediately prior to the arrest.
- Where the prisoner lived at the time of the arrest.
- Where the prisoner lived at the time of the sentencing.
- Where the prisoner's former household now lives.
- Where the prisoner wants to live after exiting the institution.

Administrative records for state prisons vary widely in content and how they're updated. When we have used records from institutions we have missing data rates that approach 50 percent. So changing the residence rule for prisoners would probably demand a greatly increased level of use of individual census forms in prisons; this requires more cooperation from prison officials.

Choosing which definition of a non-prison residence is best is not obvious; logical arguments can be made for each of the five above.

Some have argued that different rules could be used for different prisoners. For example, those who serving long term sentences, have been at the prison for some time and will be there for years more, might be counted as residents of the prison. Others, the argument goes, could be

counted as residents of one of the five ideas above. Such a design would also require linking to some administrative rules to apply the sentence length rule.

Some users of census data care about this for redistricting purposes within states. They observe that prisoners often resided in areas far removed from the location of the prison and should be counted where they're from. They note that the former homes of the prisoners are "cheated" of the benefits derived from the census counts. They argue that the locales of the prisons unfairly benefit from the counted prisoners, even though the prisoners do not enjoy the benefits that the census counts provide to the area.

This decade we are releasing early counts of prisoners (and counts of other group quarters), so that states can leave the prisoners counted where the prisons are, delete them from the redistricting formulas, or assign them to some other locale.

As a nonpartisan scientific organization, the Census Bureau is not involved in redistricting. We collect the information under uniform rules that offer the promise of accurate counts. We provide this early release to allow users more information in doing their jobs.

Counting members of all group quarters is complicated; we re-evaluate our "residence rules" after each census, to keep pace with changes in the society. We'll do that again after the 2010 Census.

Please submit any questions pertaining to this post to ask.census.gov.

Director Robert Groves

This entry was posted on Mon Mar 01 2010.

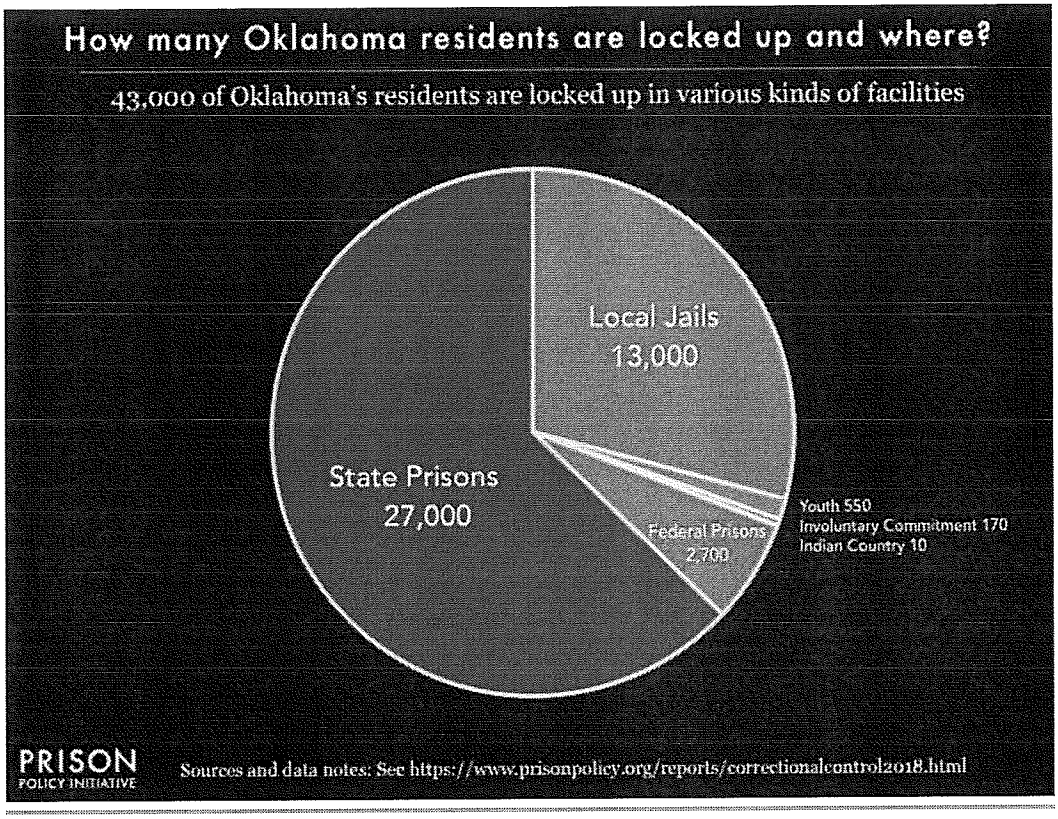
Previous
The Creativity of Partners

Next
Why we Ask For Your Telephone Number

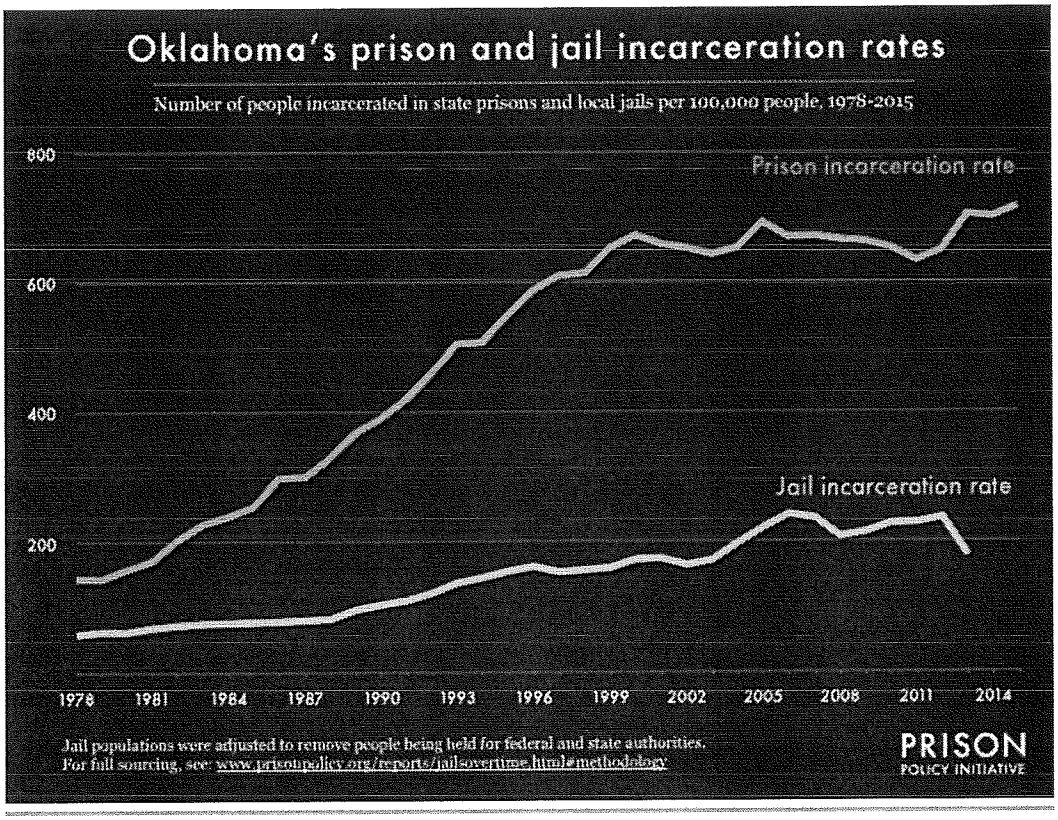
Oklahoma profile

Oklahoma has an incarceration rate of 1,079 per 100,000 people (including prisons, jails, immigration detention, and juvenile justice facilities), meaning that it locks up a higher percentage of its people than many wealthy democracies do. Read on to learn more about who is incarcerated in Oklahoma and why.

43,000 people from Oklahoma are behind bars

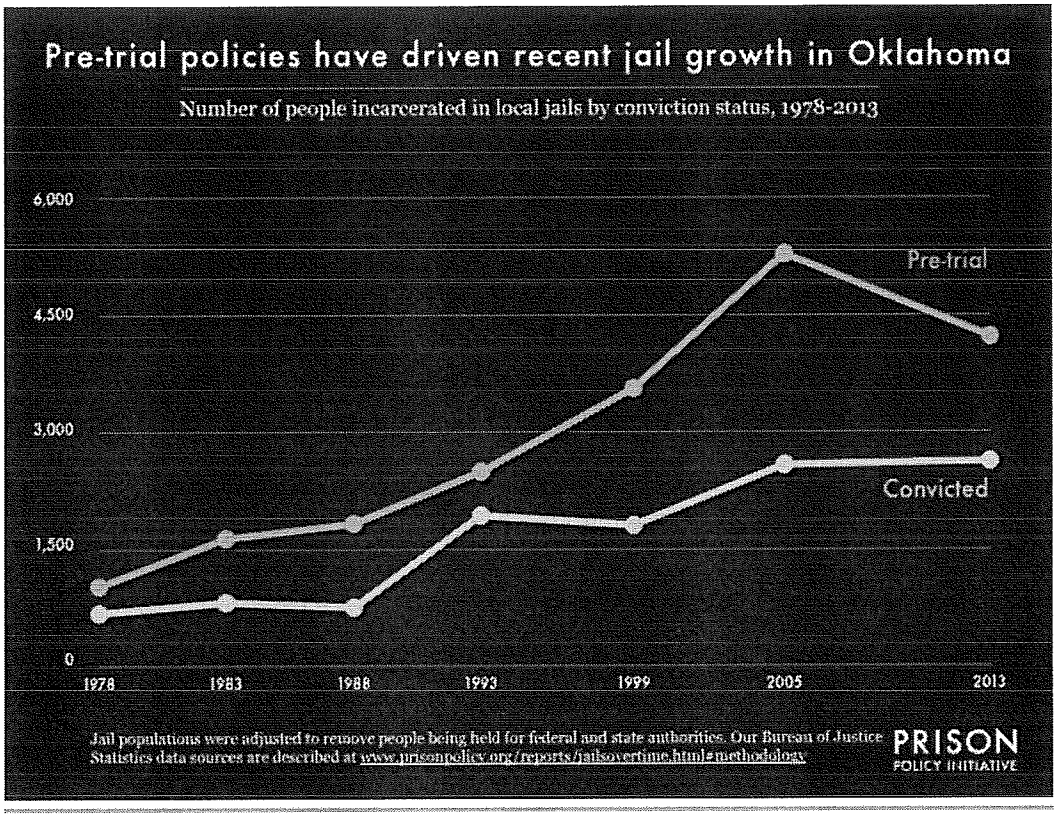


Rates of imprisonment have grown dramatically in the last 40 years

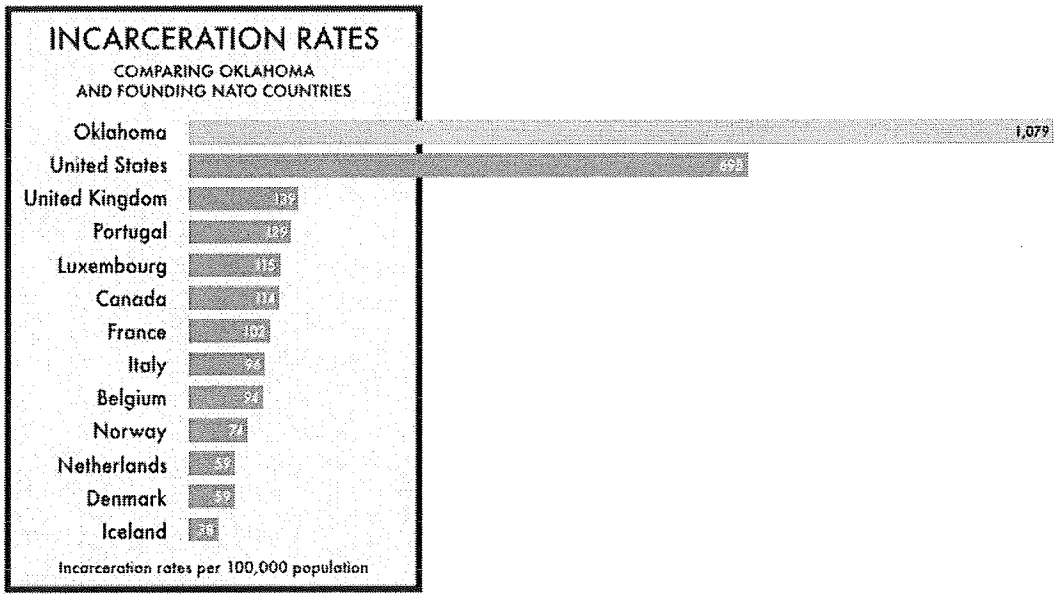


Also see these Oklahoma graphs:

- total numbers rather than rates.
- Women's prisons: Incarceration Rates | Total Population
- Men's prisons: Incarceration Rates | Total Population


Pre-trial policies have driven recent jail growth in Oklahoma
Number of people incarcerated in local jails by conviction status, 1978-2013
6,000
4,500
3,000
1,500
0
1978
1983
1988
1993
1999
2005
2013
Pre-trial
Convicted
Jail populations were adjusted to remove people being held for federal and state authorities. Our Bureau of Justice Statistics data sources are described at www.prisonpolicy.org/reports/jailsovertime.html#methodology
PRISON POLICY INITIATIVE

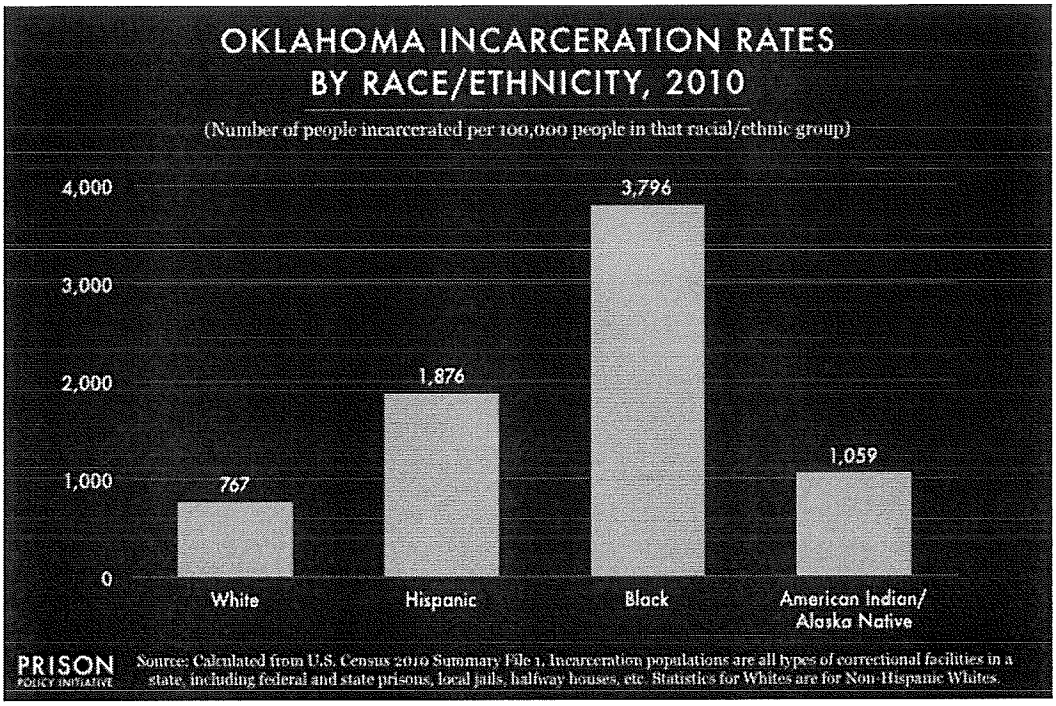
Today, Oklahoma's incarceration rates stand out internationally

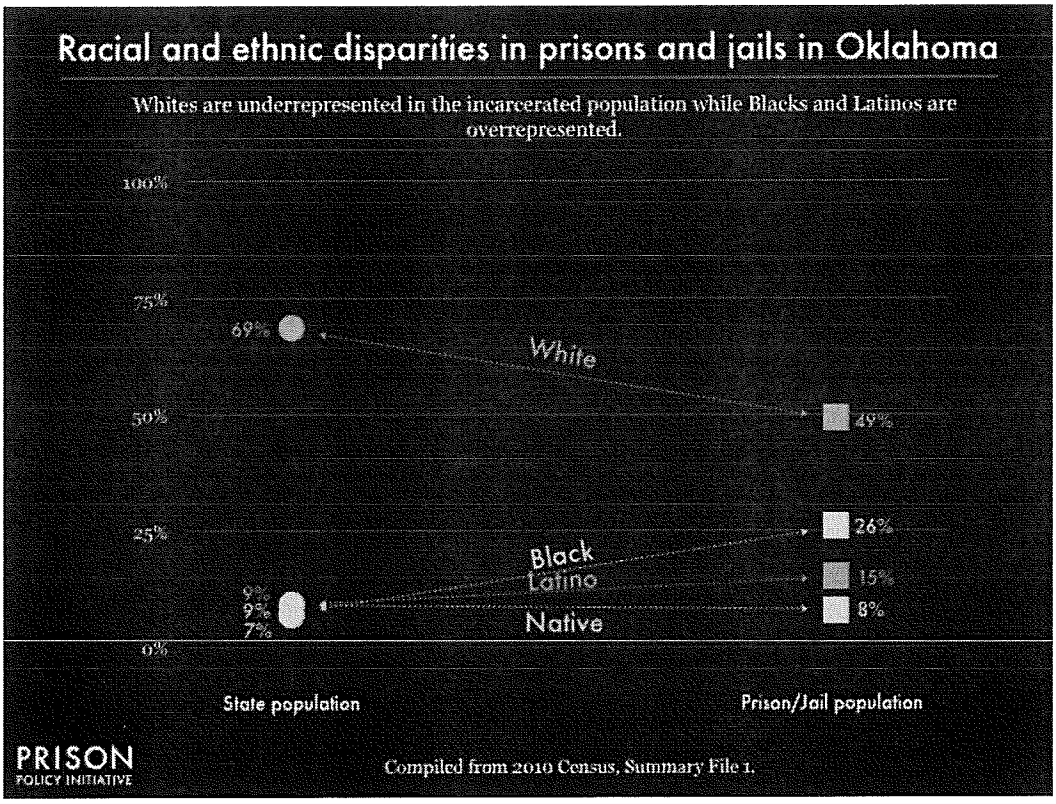


Source: https://www.prisonpolicy.org/global/2018.html

In the U.S., incarceration extends beyond prisons and local jails to include other systems of confinement. The U.S. and state incarceration rates in this graph include people held by these other parts of the justice system, so they may be slightly higher than the commonly reported incarceration rates that only include prisons and jails. Details on the data are available in States of Incarceration: The Global Context. We also have a version of this graph focusing on the incarceration of women.

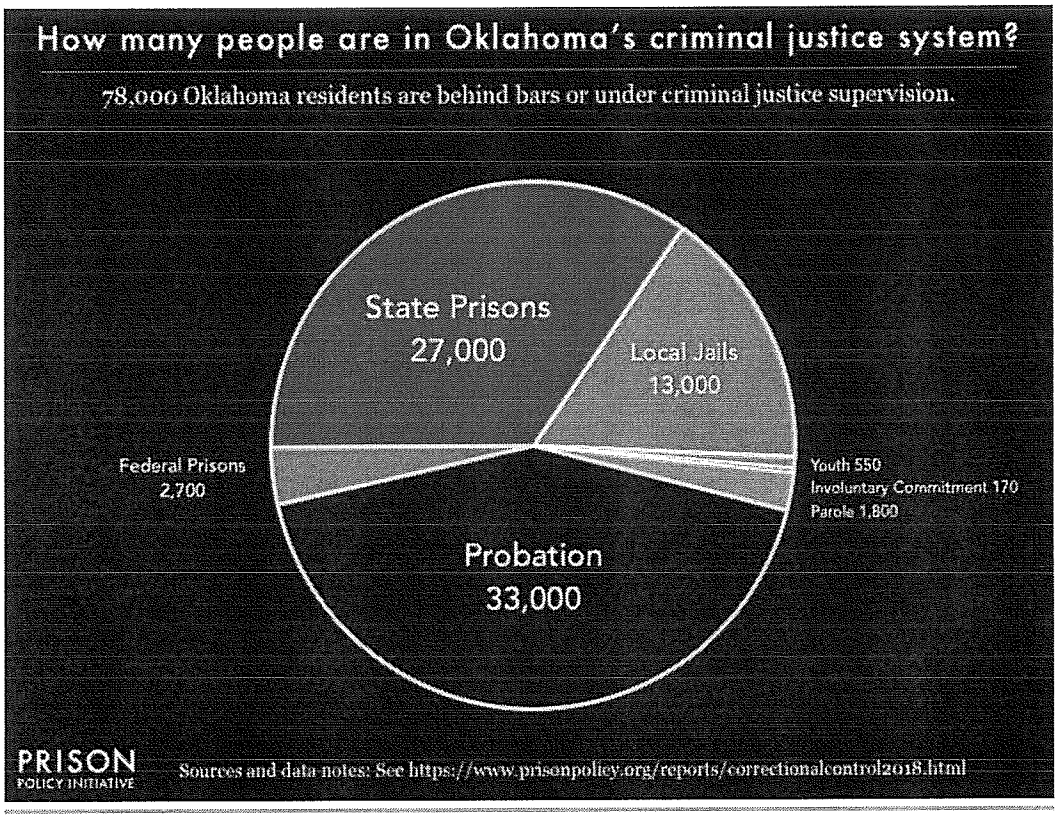
People of color are overrepresented in prisons and jails





See also our detailed graphs about Whites, Hispanics, and Blacks in Oklahoma prisons and jails.

Oklahoma's criminal justice system is more than just its prisons and jails



Our other articles about Oklahoma

- How much do incarcerated people in Oklahoma earn for their work in prison?
- Oklahoma prisons charge a $4 copay to incarcerated people, putting health at risk
- New data: Low incomes - but high fees - for people on probation in Oklahoma
- We graded the parole release systems of all 50 states - Oklahoma gets an F
- Who's helping the 25,177 women released from Oklahoma correctional facilities each year?
- Oklahoma has some of the highest prison and jail phone rates in the country
- Indiana, Oklahoma, and Arkansas undermine their own criminal justice reform agenda with challenge of FCC regulation of prison phone industry

Prison-based gerrymandering in Oklahoma

- Importing Constituents: Prisoners and Political Clout in Oklahoma
- Prison gerrymandering finally solved in McAlester, Okla.

PRISON GERRYMANDERING PROJECT

from the Prison Policy Initiative

Legislation

State and local governments can take action on their own to end prison gerrymandering; they need not wait for the Census Bureau to change where incarcerated people are counted.

Sections

Model legislation
Enacted legislation
Current bills
Past legislative efforts

Model legislation

- Model state legislation to end prison-based gerrymandering with some guidance on how to customize for your state.

Enacted legislation

- **California:** AB 420, An act to add Section 21003 to the Elections Code, relating to redistricting, introduced by Assembly Member Davis, February 14, 2011. The bill passed the Assembly on June 1 and the Senate on August 30, and was signed by the governor on October 7, 2011. And AB 1986, An act to amend Section 21003 of the Elections Code, relating to redistricting, introduced by Assembly Member Davis, amended March 29, 2012, was signed by the governor on September 14, 2012. (The bill amends AB 420, adding privacy protections and covering people incarcerated in federal facilities, a full bill analysis is available from the Assembly Committee on Elections and Redistricting.)

- **Colorado**: Senate Bill 02-007 Concerning County Commissioner Redistricting, sponsored by Senator Hillman, and Representatives Kester, Garcia, and Hoppe, and approved by the Governor on March 27, 2002, prohibits counties from using prison populations when drawing county commissioner districts. Two years later, the state passed House Bill 04-1230, Concerning the Election of School District Directors from Director Districts, sponsored by representatives Hall, May M., Crane, Fairbank, Lundberg, Mitchell, Rose, Williams S., Williams T., Cadman, Garcia, Hefley, Lee, and Vigil and Senator Jones, and approved by the Governor on April 21, 2004, which prohibits school districts from using prison populations when drawing school director districts.

- **Delaware:** House Bill # 384, An Act To Amend Title 29 of the Delaware Code Relating to State Government, passed unanimously by the Delaware House, June 1, 2010, and 17-3 in the Delaware Senate, June 30, 2010. Signed by the Governor August 31, 2010, Primary sponsor: Representative Keeley. Additional sponsors: Rep. J. Johnson & Rep. D.P. Williams & Sen. Henry. Cosponsors: Reps. Barbieri, Brady, Hudson, Mitchell; Sens. Marshall, McDowell. Amended May 13, 2011.

- **Maryland:** No Representation Without Population Act, introduced in the House of Delegates by Delegate Pena-Melnyk as HB496 and in the Senate by Senator Pugh as SB400, January 29, 2010. Signed by the governor, April 13, 2010. Regulations were adopted, effective February 25, 2011.

- **Massachusetts:** S 309 and H 3185 "Resolutions Urging the Census Bureau to Provide Redistricting Data that Counts Prisoners in a Manner Consistent with the Principles of 'One Person, One Vote,'" sponsored by Senator Sonia Chang-Diaz and Representative Linda Dorcena Forry, respectively, introduced on January 22, 2013. The resulting joint resolution was passed by the Senate on July 31, 2014 and the House on August 14, 2014, and delivered to the Director of the Census Bureau on September 12, 2014.

- **Michigan**: Statutory requirements for redistricting prevent state prison populations from skewing either county (Mich. Comp. Laws § 46.404(g)) or municipal (Mich. Comp. Laws § 117.27a (5)) democracy. The statutes provide that the district population cannot include anyone in a state institution who is not a resident of the city or county for election purposes.

- **Nevada:**AB450, "...revising the manner in which certain incarcerated persons are counted for purposes of the apportionment of the population for legislative districts, congressional districts and the districts of the Board of Regents...", sponsored by the Assembly Committee on Legislative Operations and Elections, introduced March 25, 2019. Passed Assembly April 17, 2019 and Senate May 23, 2019, and was signed by the Governor on May 29.

- **New Jersey:** S758, "requir[ing] incarcerated individual from State to be counted at residential address for legislative redistricting purposes", introduced by Senators Sandra Cunningham and Nilsa Cruz-Perez, January 9, 2018, and A1987, introduced by Assemblymembers Sumter, Mukherji, Quijano, and Pinkin, January 9, 2018. S758 passed the Senate on February 25,2019, the Assembly on January 13, 2020, and signed into law by the Governor on January 21, 2020.

- **New York**'s bill to end prison-based gerrymandering was attached as part XX of the revenue budget (A9710D/S6610C) and had a technical amendment, A11597/S8415. The Bill and the amendment passed the Assembly on July 1, and the Senate on August 3, 2010. Both were signed by the governor on August 11, 2010.

- **Essex County, New York:** More than a hundred rural counties and municipalities around the country refuse to engage in prison-based gerrymandering when drawing their local district lines, but to our knowledge Essex County Local Law No 1 of 2003 is the only one to put their rationale directly the law's text.

- **Tennessee**: the state amended its redistricting statute in 2016 to allow counties to avoid prison-based gerrymandering. The bill passed the House on April 4, and the Senate on April 11 and signed by the governor on April 27, 2016.

- **Virginia:** HB 13, "Redistricting local districts; local government may exclude prison populations from its calculation," prefiled by Delegate Riley E. Ingram, December 2, 2011, passed unanimously by both the House and Senate in February 2012, and signed into law by the Governor on March 23, 2012. (For our analysis of the bill, see Virginia bill would help counties avoid prison-based gerrymandering.) HB 1339, "Election districts & redistricting; locality permitted to exclude from census correctional facility," prefiled by Delegate R. Lee Ware, Jr., November 20, 2012, passed the House unanimously on January 23, and with bipartisan support in the Senate on February 15, and was signed into law by the Governor on March 18, 2013. (For our analysis of the bill, see Virginia ends mandatory prison gerrymandering.) The bills apply only to county, city or municipal redistricting, and do not apply to funding or other uses of Census data, including state redistricting.

- **Washington:** "Ensuring accurate redistricting", SB 5287, signed into law by the Governor on May 21, 2019, end prison gerrymandering of Washington State's state legislative districts.

Current bills

- **Colorado:** HB 20-1010, "Colorado Accurate Residence for Redistricting Act", sponsored by Rep. K. Tipper and Rep. J. Coleman, filed on January 8, 2020. Passed the House on February 6, 2020 and the Senate on February 25, 2020; the bill now awaits the Governor's signature.

- **Connecticut:** SB 368, introduced by the Government Administration and Elections Committee for the February Session, 2020.

- **Florida:** SB 268, "Decennial Census; Requiring the Legislature to adjust federal decennial census figures to include prisoners in the geographic areas where they last resided before incarceration rather than the facility where they resided at the time of the federal census...", filed by Senator Randolph Bracy on September 12, 2019.

- **Illinois:** HB 0203, "No Representation Without Population Act," sponsored by Representatives LaShawn K. Ford, prefiled on December 19, 2018.

- **Louisiana:** HB 625, "relative to the allocation of incarcerated persons for the purposes of all redistricting by the legislature", prefiled by Representative Edward Ted James, February 28, 2020.

- **Michigan:** SB 759, introduced by Senator Santana on January 28, 2020.

- **Minnesota:** HF 3493, introduced by Representatives Long, Noor, Stephenson, Moller, Howard, Wazlawik, Davnie, Edelson, Elkins, Hornstein, Lippert, Bierman, Sandell, Bahner, Vang, Jordan, Lee, Freiberg, Schultz, Dehn, Pinto, and Lieblingon on February 18, 2020.

- **Nebraska:** LB 1157, "to provide for counting Nebraska residents confined to prison in Nebraska as prescribed" introduced by Senator Vargas on January 22, 2020.

- **Pennsylvania:** HB 940 An act... "providing for residence of incarcerated individuals", introduced by Representatives McClinton, Schlossberg, Millard, Hill-Evans, Kinsey, Burgos, Bullock, Warren, Neilson, Fiedler, Kenyatta,Youngblood, Irvin, and Webster, March 25, 2019.

- **Rhode Island:** H 5513, "Residence of Those in Government Custody Act", introduced by Representatives Williams, Vella-Wilkinson, Craven, Caldwell, and Almeida, February 14, 2019. And S 232, "Residence of Those in Government Custody Act", introduced by Senators Metts, Nesselbush, Quezada, Cano, and Crowley, January 31, 2019.

- **Virginia:** SB 516, "Redistricting; population data, reallocation of prison populations", prefiled by Senator John Edwards on January 7, 2020, and HB 319 prefiled by Delegate Mark Levine on December 31, 2019. And HB 1254, "Redistricting; population data, reallocation of prison populations" introduced

by Delegate Marcia Price as chief patron, with Delegates Patrick Hope, Joseph Lindsey, and Sam Rasoul co-patrons, prefiled on January 8, 2020. Provisions to end prison gerrymandering are also included in the following broader redistricting criteria and redistricting commission bills: HB 1255 (Del. Price), SB 717 (Sen. McClellan), HB 1256 (Del. Price), HB 758 (Del. VanValkenburg), and SB 203 (Sen. Lucas).

- **Wisconsin:** AB 400, relating to counting individuals confined in state prison to determine population for redistricting purposes, introduced by Representatives Crowley, Emerson, Anderson, Bowen, Brostoff, Cabrera, Fields, Goyke, Hebl, L. Myers, Neubauer, Ohnstad, Sargent, Spreitzer, Subeck, C. Taylor and Zamarripa; and cosponsored by Senators L. Taylor, Bewley, Carpenter, Johnson, Larson, Risser and Smith, September 5, 2019.

- **Federal:** HR 794, "Correct the Census Count Act," sponsored by Representative Clay, introduced on January 25 2019; and HR 1, "For the People Act," prison gerrymandering amendment offered by Representative Pocan, agreed to on March 7, 2019 and HR 1 passed the House on March 8, 2019.

Efforts in previous legislative sessions:

- **Oregon:** HB 2492, "Relating to redistricting", has chief sponsors Representative Holvey and Senator Prozanski and regular sponsors Representatives Nosse, Piluso, Sanchez, filed on January 14, 2019.

- **Connecticut:**HB 5611, introduced by the Government Administration and Elections Committee for the January Session, 2019.

- **Louisiana:** HB 46, "relative to the allocation of incarcerated persons for the purposes of all redistricting by the legislature", prefiled by Representative Bouie, March 7, 2019.

- **Texas:** "An Act Relating to the inclusion of an incarcerated person in the population data used for redistricting according to the person's last residence before incarceration" was filed by Representative Johnson as HB 104 on November 12, 2018.

- **Nevada:** SIGNED INTO LAW: May 29, 2019. AB450, "...revising the manner in which certain incarcerated persons are counted for purposes of the apportionment of the population for legislative districts, congressional

districts and the districts of the Board of Regents...", sponsored by the Assembly Committee on Legislative Operations and Elections, introduced March 25, 2019.

- **New Jersey:** SIGNED INTO LAW: January 21, 2020. S758, "requir[ing] incarcerated individual from State to be counted at residential address for legislative redistricting purposes", introduced by Senators Sandra Cunningham and Nilsa Cruz-Perez, January 9, 2018, and A1987, introduced by Assemblymembers Sumter, Mukherji, Quijano, and Pinkin, January 9, 2018. S758 passed the Senate on February 25,2019, the Assembly on January 13, 2020, and signed into law by the Governor on January 21, 2020.

- **Washington:** SIGNED INTO LAW: May 21, 2019. "Ensuring accurate redistricting", SB 5287, sponsored by Senators Darneille and Hunt, introduced on January 17, 2019.

- **Rhode Island:** H 7530, "Residence of Those in Government Custody Act", introduced by Representatives Williams, Ajello, Ranglin Vassell, Perez, and Slater, February 9, 2018. And S 2267, "Residence of Those in Government Custody Act", introduced by Senators Metts, Jabour, Quezada, Crowley, and Nesselbush, February 01, 2018.

- **Illinois:** HB 0205, "No Representation Without Population Act," sponsored by Representatives LaShawn K. Ford, prefiled on December 5, 2016.

- **Louisiana:** HB 89, prefiled by Representative Smith, February 20, 2018.

- **Rhode Island:** H 5309, "Residence of Those in Government Custody Act", introduced by Representatives Williams, Slater, Ajello, Cunha, and Lombardi, February 1, 2017. And S 0344, "Residence of Those in Government Custody Act", introduced by Senators Metts, Jabour, Quezada, Crowley, and Nesselbush, February 16, 2017.

- **New Jersey:** S587, "requir[ing] incarcerated individual from State to be counted at residential address for legislative redistricting purposes", introduced by Senator Sandra Cunningham, January 1, 2016 (passed the Senate on November 14,2016), and A2937, introduced by Assemblywoman Shavonda Sumter, February 16, 2016; and A3292, introduced by Assemblymembers Wimberly, Barclay, Eustace, Oliver, Spencer, and Tucker, February 22, 2016. S587 passed both chambers but was vetoed by the Governor.

- **Texas:** "An Act Relating to the inclusion of an incarcerated person in the population data used for redistricting according to the person's last residence before incarceration" was filed by Representative Johnson as HB 1215 on January 23, 2017.

- **Louisiana:** HB 228, prefiled by Representative Smith, March 29, 2017.

- **Connecticut:**SB 459, introduced by the Judiciary Committee for the February Session, 2016.

- **Rhode Island:** H 7400, "Residence of Those in Government Custody Act", introduced by Representatives Williams, Regunberg, Ajello, Costa, and Lombardi, January 28, 2016. And S 2310, "Residence of Those in Government Custody Act", introduced by Senators Metts, Crowley, Jabour, Pichardo, and Doyle, February 9, 2016.

- **Illinois:** HB 1489, "No Representation Without Population Act," cosponsored by Representatives LaShawn K. Ford, Mary E. Flowers, Eddie Lee Jackson, Sr., Camille Y. Lilly, Jehan A. Gordon-Booth, Emanuel Chris Welch, Carol Ammons, Kenneth Dunkin and Arthur Turner, filed on February 5, 2015.

- **Tennessee:** HB 752, "Prison Gerrymandering Reform Act", introduced by Representative Camper, February 11, 2015 and SB 1212, "Prison Gerrymandering Reform Act", introduced by Senator Yarbro, February 12, 2015. And HB 302, "No Representation Without Population Act of 2015", introduced by Representative Favors, February 4, 2015, and SB 1075, "No Representation Without Population Act of 2015", introduced by Senator Harris, February 12, 2015.

- **Minnesota:** HF 1189, authored by Representatives R. Dehn, Atkins, Mariani, Schoen, Moran, and Clark, February 25, 2015; and SF 1151, authored by Senators Hayden, B. Petersen, Rest, and Hoffman, February 26, 2015. Provisions ending prison gerrymandering are also included as Article 6 of the Senate's elections omnibus reform bill, SF 455, which passed the Senate on May 11, 2015.

- **Oregon:** SB 331, sponsored by Senator Shields, Representative Parrish, and Representative Frederick as chief sponsors and Senator Beyer and Senator Edwards as regular sponsors, precession filed for the 2015 regular session.

- **Rhode Island:** H 5155, "Residence of Those in Government Custody Act", introduced by Representative Anastasia P. Williams, January 21, 2015. And

S 0239, "Residence of Those in Government Custody Act", introduced by Senators Metts, Crowley, Jabour, Nesselbush, and Pichardo, February 11, 2015.

- **New Jersey:** S480, "requir[ing] incarcerated individual from State to be counted at residential address for legislative redistricting purposes", introduced by Senator Sandra Cunningham, January 14, 2014; and A659, introduced by Assemblymembers Cryan, Wisniewski, Oliver, and Quijano.

- **Federal:** HR 1537, "To amend title 13, United States Code, to provide that individuals in prison shall, for the purposes of a decennial census, be attributed to the last place of residence before incarceration," introduced by Representatives Jeffries (NY), Richmond (LA), Rangel (NY), Johnson (GA), Clarke (NY), Scott (VA) on April 12, 2013.

- **Virginia:** SB 765, "Redistricting; certain population data to be used" introduced by Senator John Edwards as chief patron, with Senator Janet Howell as co-patron, prefiled on December 23, 2014. And HB 1465, "Population data to be used in redistricting" introduced by Delegate Sam Rasoul as chief patron, with Delegate David B. Albo as chief co-patron, and Delegate Patrick A. Hope as patron, prefiled on December 30, 2014.

- **Illinois:** HB 62, "No Representation Without Population Act," prefiled by Rep. LaShawn K. Ford, January 3, 2013. The bill passed the House on May 15, 2013.

- **Rhode Island:** "The Residence of Those in Government Custody Act," introduced as S 2286 by Senators Metts, Crowley, Pichardo, and Jabour on February 4, 2014, and as H 7263 by Representatives Williams, Tanzi, Slater, Diaz, and Palangio, on January 30, 2014.

- **Connecticut:** HB 5518, "An Act Concerning the Determination of Residence for Incarcerated Persons," introduced by Rep. Gary Holder-Winfield, January 22, 2013; HB 6679, "An Act Concerning the Counting of Incarcerated Persons for Purposes of Determining Legislative Districts and Distributing State and Federal Funds," introduced by the Judiciary Committee, March 25, 2013.

- **Oregon:** SB 516, sponsored by the committee on General Government, Consumer And Small Business Protection, and HB 2686, sponsored by Representatives Berger and Bailey, both introduced in the 2013 Regular Session.

- **Rhode Island:** "The Residence of Those in Government Custody Act," introduced as S 0147 by Senators Metts, Crowley, Pichardo, and Jabour on January 24, 2013, and as H 5283 by Representatives Williams, Lally, Guthrie, Hull, and Ajello, on February 6, 2013.

- **Texas:** "An Act Relating to the inclusion of an incarcerated person in the population data used for redistricting according to the person's last residence before incarceration" was filed by Representative Dutton as HB 329 on December 21, 2012, and Representative Johnson as HB 684 on January 24, 2013.

- **Kentucky:** BR 219, "An act relating to information used in redistricting", pre-filed by Representative Darryl T. Owens, October 25, 2012.

- **New Jersey:** S1055, "requir[ing] incarcerated individual from State to be counted at residential address for legislative redistricting purposes", introduced by Senator Sandra Cunningham, January, 2012; and A1437, introduced by Assemblymembers Watson Coleman and Coutinho.

- **Rhode Island:** H 7090 Residence of Those in Government Custody Act, introduced by Representatives Williams, Cimini, Handy, Slater, and McCauley, January 11, 2012 and S 2218, introduced by Senators Metts, and Pichardo, January 24, 2012.

- **Arkansas:** HB1996 To Clarify County Population for Apportionment Purposes; To Require the Department of Correction to Collect and Maintain Residential Address Information for Incarcerated Persons, introduced by Rep. Andrea Lea, March 4, 2011; HB2102 To Clarify County Population for Apportionment Purposes, to Require the Department of Corrections to Collect and Maintain Residential Address Information for Incarcerated Persons, to Clarify the Distribution of Funds to Counties, introduced by Rep. Andrea Lea, March 7, 2011; Resolution HR1024 To Urge the United States Census Bureau to Provide Redistricting Data that Counts Prisoners in a Manner Consistent with the Principles of "One Person, One Vote", introduced by Rep. Andrea Lea, March 7, 2011

- **Connecticut:** HB6606, An Act Concerning the Determination of the Residence of Incarcerated Persons for Purposes of Legislative Redistricting, introduced March 16, 2011

- **Georgia:** HB 163 To provide for the inclusion and exclusion of certain prisoners in population counts when redistricting plans are created, sponsored

by Representatives Dawkins-Haigler, Mayo, Beasley-Teague, Stephenson, Heard and Stephens, February 2, 2011

- **Indiana:** House Bill 1459 Residence of incarcerated persons, introduced by Rep. C. Brown, January 20, 2011

- **Illinois:** HB94 Prisoner Census Addresses, introduced by Rep. LaShawn K. Ford, January 12, 2011

- **Oregon:** Senate Bill 720, Relating to redistricting, February 15, 2011

- **Rhode Island:** Senate Bill 0340, Senators Metts, Pichardo, Jabour, Goodwin, and Perry, February 16, 2011

- **Texas:** HB 1227, Relating to the inclusion of an incarcerated person in the population data used for redistricting according to the person's last residence before incarceration, introduced by Representative Dutton, February 9, 2011.

- **Virginia:** HB 2073 Redistricting local districts; local government may exclude from its calculations, introduced by Delegate Riley E. Ingram, January 12, 2011. it passed the House, 99-0 on February 8, 2011, but was passed over in the Senate.

- **Kentucky:** HB 484, AN ACT relating to information used in redistricting, introduced by Representative D. Owens, February 14, 2011

- **New York:** S6725A, AN ACT to amend the correction law, the legislative law, and the municipal home rule law, in relation to the collection of census data, with Sponsor's Memo, introduced by New York State Senator Eric T. Schneiderman, February 1, 2010 and A9834A introduced by New York State Assemblymember Jeffries, and co-sponsored by Assemblymembers Espaillat, Dinowitz, Arroyo, Rivera P, Heastie, Lavine, Benjamin, Kavanagh, Kellner, Boyland, Clark, Crespo, Glick, Hooper, Latimer, Peoples-Stokes, Perry, Rosenthal, Stirpe, and Towns.

- **Federal:** Rep Gene Green (D, TX) has introduced a bill that would require the U.S. Census, starting with the 2020 Census, to count incarcerated people as residents of their pre-incarceration addresses: H.R. 2075, April 23, 2009

- **Rhode Island:** Residence of Those in Government Custody Act [PDF] (H7833), introduced by Representative Joseph S. Almeida, February 25, 2010 and S2452 [PDF] introduced by Senators Metts, Jabour, Pichardo, Goodwin,

and Perry, February 11, 2010

- **Connecticut:** General Assembly Bill No. 5523

- **Florida:** Senate 1386 introduced by Senator Bullard on January 26, 2010

- **Illinois:** Prisoner Census Adjustment Act introduced by Rep. LaShawn K. Ford, October 14, 2009

- **Minnesota:** An act relating to redistricting; requiring the exclusion of persons incarcerated in state or federal correctional facilities from population counts used for state and local redistricting, introduced by Senator Higgins, March 2010: S.F. No. 3097 and H.F. 3536 introduced by Rep. Champion

- **Pennsylvania:** A Resolution urging the United States Census Bureau to change its policy of recording the residence of incarcerated persons from the location of the correctional facilities to the last known home address of such persons, introduced by Representatives Cruz, Youngblood, Parker and Siptroth, January 20, 2010

- **Wisconsin:** Census Correction Amendment [PDF] to require that incarcerated people be excluded from the population base used for redistricting legislative, county, and other districts. Introduced by Representatives Kessler, Black, Grigsby, Turner and A. Williams, cosponsored by Senator Taylor, June 22, 2009.

- **Oregon:** Senate Bill 1028, sponsored by Senator Shields; Senator Rosenbaum, Representatives Holvey, Kahl, Kotek, February 1, 2010

- **New York:** S1633 introduced by New York State Senator Eric T. Schneiderman and Senators Breslin, Diaz, Dilan, Duane, Hassell-Thompson, Krueger, Montgomery, Onorato, Oppenheimer, Parker, Sampson, Savino, Serrano, Stavisky and Thompson An Act to amend the election law, in relation to the residential classification of certain incarcerated persons February 3, 2009, and A9380 introduced by Assemblymember Jeffries, and co-sponsored by Assemblymembers Espaillat, Dinowitz, Arroyo, Rivera P, Heastie, Lavine, Benjamin, Kavanagh, Kellner, Boyland, Clark, Crespo, Glick, Hooper, Latimer, Peoples-Stokes, Perry, Rosenthal, Stirpe, and Towns.

- **Oregon:** H2930, introduced by Representative Shields (D, Oregon); Representatives Bruun, Freeman, Greenlick, Kahl, J Smith, directing the Department of Corrections to collect home address information so the

legislature can draw districts with inmates counted at their home addresses [PDF], audio from hearing, (.ram file, start at minute 28) March 2009

- **Texas:** Acts relating to the inclusion of an incarcerated person in the population data used for redistricting according to the person's last residence before incarceration. HB 672 introduced by Rep. Hodge in January 2009, and HB2855 introduced by Rep. Dutton, March 2009.

- **Pennsylvania:** H525 introduced by Pennsylvania Reps. Cruz, Youngblood, Myers, Wheatley, Caltagirone, Parker, Josephs, Swanger and James, Urging the United States Census Bureau to change its policy of recording the residence of incarcerated persons from the location of the correctional facilities to the last known home address of such persons , December 6, 2007 [PDF].

- **Michigan:** HB No 4935 introduced by Michigan Reps. Lemmons, Young and Gonzales A bill to require state and local governmental bodies to use census figures adjusted to reflect preincarceration addresses of persons imprisoned in this state June 19, 2007

- **New York:** S1934 introduced by New York State Senator Eric T. Schneiderman, An Act to amend the election law, in relation to the residential classification of certain incarcerated persons January 29, 2007

- **New York:** S2754 introduced by New York State Senator Eric T. Schneiderman An Act to amend the election law, in relation to the residential classification of certain incarcerated persons February 25, 2005

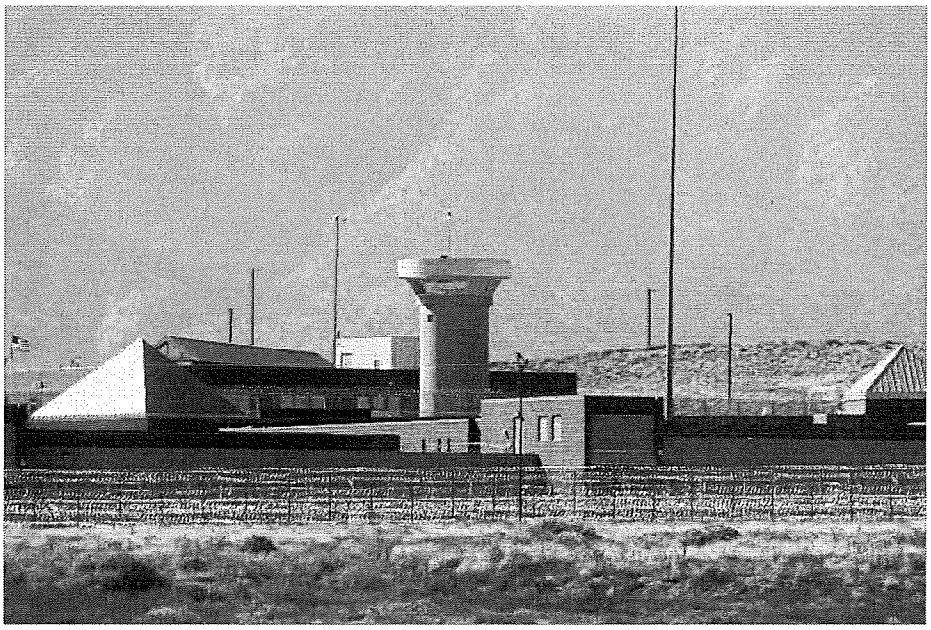
- **Illinois:** HB 906 introduced by Illinois Representative Arthur Turner Prisoner Census Adjustment Act February 2, 2005

- **Illinois:** HB 7338 introduced by Illinois Representative Arthur Turner Prisoner Census Adjustment Act October 22, 2004. Bill text

- **Texas:** H.B. No. 2639 drafted by Texas Representative Dutton An act relating to the inclusion of an incarcerated person in the population data used for redistricting according to the person's last residence before incarceration. (2001)

OPINION > OPINION COLUMNISTS

Guest Commentary: Why we're about to end prison gerrymandering in Colorado



Brennan Linsley, Associated Press file

A guard tower looms over a federal prison complex which houses a Supermax facility outside Florence, in southern Colorado in 2015.

By **KERRY TIPPER** and **JAMES COLEMAN** | Guest Commentary

PUBLISHED: February 26, 2020 at 10:54 a.m. | UPDATED: February 26, 2020 at 10:54 a.m.

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Appendix 7

Our bill to end prison gerrymandering in Colorado is just one step away from becoming law. Earlier this month, the House voted to pass HB 1010, and now the Senate has done the same. If it is signed by the governor, as we expect it to be, this bill would ensure that our state has fair electoral maps, a stronger democracy, and more just political representation.

Prison gerrymandering is the practice of counting incarcerated individuals as residents of the prison cells they have been placed in. There are several important problems here. First of all, the Colorado Constitution plainly declares that a prison cell is not a residence, meaning that people in prison are not legal constituents of the area where they have been incarcerated. And they're definitely not treated as such.

While digging into this issue and drafting this bill, we spoke to several elected officials who represented large populations of incarcerated people and asked if they had ever held a town hall in a correctional facility. No one knew how many inmates were in their district, and only one had ever met with incarcerated individuals in their district.

So how can we improve this system? Our bill would ensure that inmates are, for purposes of state redistricting, counted as residents of their last known address during the census. The result would be that a prisoner's political representation will be tied to the community they are rooted in and not the temporary prison cell where they are serving time. Since the average prisoner in Colorado is only incarcerated for three years and the census happens every ten, this is especially important.

This bill is about fairness, plain and simple. With the 2020 Census coming to Colorado in the next month or so, we want to ensure that Colorado has accurate and fair representation in the next decade and beyond. While we certainly set out to do right by the 19,000 or so incarcerated individuals in Colorado, our bill is about much more than just them. More accurate district maps, a fairer count of Coloradans, and better population data means a stronger democracy. This bill will make a difference for everyone who wants to ensure their districts have the most accurate representation possible.

As informed readers will know, Census counts are about more than just redistricting and political representation — the distribution of federal funds are tied to census counts. Rest assured, this bill will not affect how state or federal funding is allocated. It may alter the shape of some legislative districts, but this won't impact funding for any district's infrastructure, public safety, or other services.

This is because no funding agency, in any state, ever relies on redistricting data to determine grant amounts. Furthermore, the bill will have a zero-dollar fiscal impact. The Department of Corrections already has the data required by the bill, and the Census Bureau will even aid in correcting the redistricting data.

As we begin this census year and as a nation undertake the massive enterprise of counting each and every person living here, it is imperative that we do it in the most accurate and just way possible. What's more, Coloradans have already agreed that we want fair district maps — that's why in 2018, over 60% of voters supported bipartisan Amendments Y and Z, which created two new independent redistricting commissions.

We're proud that our House and Senate colleagues joined us in passing HB 1010, and we're excited to see Gov. Jared Polis sign it into law. Our state's democracy will be better for it.

Kerry Tipper is the state Representative for House District 28, where she represents Lakewood and a small part of Littleton. She sits on the House Judiciary Committee and the House Health and Insurance Committee. James Coleman is the Representative for House District 7 in Denver. He is the Co-Whip of the Democratic Caucus and sits on the House Appropriations, Education, and Business Affairs and Labor Committees.

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Popular in the Community

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

SENATOR ELIZABETH O'C. LITTLE, SENATOR PATRICK GALLIVAN; SENATOR PATRICIA RITCHIE; SENATOR JAMES SEWARD; SENATOR GEORGE MAZIARZ; SENATOR CATHARINE YOUNG; SENATOR JOSEPH GRIFFO; SENATOR STEPHEN M. SALAND; SENATOR THOMAS O'MARA; JAMES PATTERSON; JOHN MILLS; WILLIAM NELSON; ROBERT FERRIS; WAYNE SPEENBURGH; DAVID CALLARD; WAYNE MCMASTER; BRIAN SCALA; and PETER TORTORICI,

Plaintiffs,

-against-

DECISION and ORDER
INDEX NO. 2310-2011

NEW YORK STATE TASK FORCE ON DEMOGRAPHIC RESEARCH AND REAPPORTIONMENT and NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES,

Defendants,

-and-

MICHAEL BAILEY; ROBERT BALLAN; JUDITH BRINK; TEDRA COBB; FREDERICK A. EDMOND III; MELVIN FAULKNER; DANIEL JENKINS; ROBERT KESSLER; STEVEN MANGUAL; EDWARD MULRAINE; CHRISTINE PARKER; PAMELA PAYNE; DIVINE PRYOR; TABITHA SIELOFF; and GRETCHEN STEVENS,

Intervenors-Defendants.

(Eugene P. Devine, J.S.C., presiding)

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DEVINE, J.:

In this declaratory judgment action, plaintiffs now seek summary judgment on their first cause of action which seeks a judicial declaration that Part XX of Chapter 57 of the Laws of 2010, which requires that inmates be counted for reapportionment purposes in their last known residence prior to their imprisonment rather than in the location of their assigned correctional

facility, violates the New York State Constitution.[1] Defendant New York State Department of Corrections and Community Supervision (DOCCS) opposes the motion for partial summary judgment and has cross-moved to dismiss the complaint or, alternatively, for summary judgment in its favor. In addition, the intervenors-defendants have cross-moved for summary judgment dismissing the complaint and have opposed plaintiffs' motion.

The Court must first address certain procedural matters, namely two applications to withdraw as counsel and a cross-motion from State Senator Martin Malave Dilan for leave to file an amicus curiae brief. The two applications to withdraw as counsel are granted as the intervenors-defendants are more than adequately represented and no party is prejudiced as a result. As to Senator Dilan's motion for leave to present an amicus curiae memorandum of law, in its discretion, the Court finds that, inasmuch as the proposed memorandum and supporting documents do not present any new arguments or perspectives that differ from those provided in submissions of DOCCS and the numerous intervenors-defendants, leave is denied.[2]

Furthermore, the Senator is a member of defendant New York State Legislative Task Force on Demographic Research and Reapportionment (LATFOR), which previously informed the Court that it would not render a separate submission in this action and was satisfied that the

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[1] In the instant motion, plaintiffs' also sought summary judgment on their second cause of action seeking a declaratory judgment that passage of Part XX in a budget appropriations bill encroached upon the Legislature's power pursuant to Article III, § 1 of the New York State Constitution. However, during oral argument on the motions, the parties stipulated that the second cause of action would be dismissed, thereby eliminating such cause of action from this Court's consideration.

[2] see Matter of Colmes v Fischer, 151 Misc. 222 [1934]; compare Matter of Empire State Assn. of Assisted Living, Inc. v Daines, 26 Misc.3d 340, 343 [Sup. Ct. Albany County, 2009]; Kruger v Bloomberg, 1 Misc.3d 192, 196 [Sup. Ct. New York County, 2003].

Office of the Attorney General, as counsel for DOCCS, would adequately address plaintiffs' contentions. As a member of a party to this action that has decided the manner in which it would appear in this case, the Court finds that it is unnecessary to grant Senator Dilan leave to participate separately from LATFOR and DOCCS merely because his opinion regarding the Attorney General's representation differs from that of the co-chairs of LATFOR .[3]

The underlying facts are, briefly, that Part XX amended the Correction Law, Legislative Law and Municipal Home Rule Law to require that prison inmates be identified and counted, for purposes of creating lines for the state's Assembly and Senate districts, in the census block containing the inmate's address prior to his or her incarceration. Specifically, Part XX requires DOCCS to report to LATFOR inmates' residential addresses prior to incarceration, if available, instead of the locations of their respective correctional facilities for redistricting purposes and, in the event the inmates' prior residential addresses are unknown, were outside the state, or the inmates were confined in federal institutions, LATFOR "shall consider those persons to have been counted at an address unknown and persons at such unknown address shall not be included in such data set" to be used to draw new legislative districts.

In support of their claim of entitlement to a judgment declaring that Part XX violates Article III, § 4 of the state Constitution because the method of counting inmates in their prior residences rather than their place of incarceration deviates from that recommended by the U.S. Census Bureau, plaintiffs refer to a report issued by the Census Bureau in 2006.[4] In that report,

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[3] see Central Hanover Bank & Trust Co. v Saranac River Power Corp., 243 AD 843 [3d Dept. 1935].

[4] Article 3, § 4 states that the federal decennial census "shall be controlling as to the numbers of inhabitants in the state or any part thereof for the purposes of the apportionment of

the Census Bureau found that, at that time, it would be highly difficult to determine precise numbers of persons in each state "for apportionment purposes" unless prisoners were counted in their place of incarceration.[5] Despite the inherent difficulty in ascertaining consistent prisoner data, the Census Bureau recognized that Congress had required that prisoners be counted at their "permanent home of record," a term which was not clearly defined. The 2006 Census Bureau report concluded that counting inmates in the manner recommended by Congress would likely increase census-related costs and would burden correctional facilities that would be required to collect such data. The Court finds, however, that this report merely highlighted the difficulties attendant in attempting to collect prisoner residential data and did not, as plaintiffs infer, preclude the current statutory enactment which requires that inmates be counted at their last known residence rather than at their correctional facility. Nonetheless, at present, the Census Bureau appears to have changed its approach to counting prison inmates, as Bureau Director Robert M. Groves has reported that states may now create their own methodology for counting inmates for apportionment purposes. In March 2010, Groves stated that the Census Bureau counts individuals at their "usual residence" and that, for inmates in particular, states were free to decide the manner in which prisoners were counted, namely, at the prisons, at their pre-incarceration addresses or altogether removed from "redistricting formulas" where residential information was unavailable.[6] And, as intervenors-defendants point out, the Census Bureau purposely released its

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members of assembly and readjustment or alteration of senate and assembly districts next occurring, in so far as such census and the tabulation thereof purport to give the information necessary therefor."

[5] Affirmation of David L. Lewis, at exhibit D.

[6] Intervenors-Defendants' Exhibit 1.

"Group Quarters" data early so that states, including New York, could enact redistricting plans that opted to count inmates at their pre-incarceration locations. Accordingly, plaintiffs have not demonstrated that Part XX has rendered the data provided by the Census Bureau to be anything less than 'controlling' in the redistricting process.

Further, plaintiffs' assertion that to consider inmates whose addresses cannot be determined or are from outside the state contravenes that part of Article III that requires that all "inhabitants" be counted for apportionment purposes is unavailing. Specifically, Article III requires that Senate and Assembly districts be drawn "according to the number of their respective inhabitants, excluding aliens," and the term "inhabitants" is defined as "the whole number of persons."[7] Though inmates may be physically found in the locations of their respective correctional facilities at the time the census is conducted, there is nothing in the record to indicate that such inmates have any actual permanency in these locations or have an intent to remain. In fact, it is undisputed that inmates are transferred among the state's correctional facilities at the discretion of DOCCS and plaintiffs have not proffered evidence that inmates have substantial ties to the communities in which they are involuntarily and temporarily located. Acknowledging that "legislative enactments carry an exceedingly strong presumption of constitutionality, and while this presumption is rebuttable, one undertaking that task carries a heavy burden of demonstrating unconstitutionality beyond a reasonable doubt," the Court finds and determines that, as to their first cause of action, plaintiffs have failed to demonstrate that, as

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[7] see Art. III, § 5, § 5-a.

a matter of law, Part XX violates the state Constitution.[8] Therefore, plaintiffs' first cause of action must be dismissed.

Turning to defendants' and intervenors-defendants' respective motions for summary judgment dismissing the remaining causes of action, the Court will first consider plaintiffs' claim that Part XX violates the one-person, one-vote principle. Specifically, plaintiffs allege in their complaint that the statute "exacerbates the weight of vote differential between upstate and downstate counties that already exists because even with the total population being counted, there remains the disparate presence in downstate counties of ineligible voters and traditionally lower voter turnout rates," without further explaining how the purported ineligibility of individuals who are counted "downstate" has any impact on LATFOR's mandate to create legislative districts which are "substantially equal in population," nor do plaintiffs provide any evidence substantiating such claims.[9] In the memorandum of support concerning the subject legislation, the bill's sponsor explains that, as inmates do not use local "schools, hospitals, or other public facilities," unlike other individuals who are considered part of "group quarters," such as college students and military personnel, to continue counting them as inhabitants of the state's prison communities tends to dilute minority voting strength in violation of the federal Voting Rights Act of 1965 and the one-person, one-vote rule. The sponsor goes on to explain that Part XX sought to rectify the "electoral inequities" created by enumerating prisoners as part of districts in which they were involuntarily and temporarily placed. As these policy

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[8] Matter of Frontier Ins. Co. v Town Bd. of Town of Thompson, 285 AD2d 953, 955 [3d Dept. 2001], quoting Elmwood-Utica Houses v Buffalo Sewer Auth., 65 NY2d 489 [1985].

[9] Longway v Jefferson County Bd. of Supervisors, 83 NY2d 17, 19 [1993]; see Reynolds v Sims, 377 US 533, 568 [1964].

determinations provided the requisite rational bases for enacting Part XX, the applications for dismissal of the equal protection claims must be granted.[10]

Furthermore, the Court agrees with defendants' assertion that plaintiffs' fourth cause of action must be dismissed for lack of standing. Under that claim, plaintiffs contend that Part XX denied equal protection rights to "all non-prisoners counted in group quarters," however, as no plaintiff confesses to being part of any "group quarter," plaintiffs cannot meet the threshold requirement of standing to assert this claim.[11] Plaintiffs' fifth and sixth causes of action, which repeat claims of equal protection violations, assert that Part XX irrationally counts inmates at their pre-incarceration addresses "even though they may have no ability or intention to return to such place thereby eliminating it as ever being a residence" and that counting them at their prior addresses impinges on the equal protection rights of other "persons," without further elaboration. Such claims are highly speculative and conclusory and fail to convince the Court that the underling legislative enactment is anything other than rationally based and constitutionally sound. Finally, plaintiff's seventh cause of action, which purports to raise of a claim of partisan gerrymandering, alleges that Part XX is the product of a power play by Democratic lawmakers to usurp the strength of the "Republican Party, its voters and elected representatives." Even in the event such claims were justiciable,[12] the Court finds and determines, nonetheless, that there is nothing in the record which demonstrates that the subject enactment constitutes a breach of the

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[10] see e.g. Dalton v Pataki, 5 NY3d 243, 265-266 [2005].

[11] see Matter of New York Assn. of Convenience Stores v Urbach, 92 NY2d 204, 212 [1998].

[12] The United States Court of Appeals, in Veith v Jubelirer, 541 US 267 [2004], held that claims of political gerrymandering are non-justiciable.

legislature's obligation to substantially comply with the federal and state constitutions.[13]

Accordingly, it is now

ORDERED that the motions for leave to withdraw as counsel by Andrew Kalloch, Esq. and Allegra Chapman, Esq. are both granted; it is further

ORDERED that the motion for leave to file an amicus curiae memorandum of law by Senator Martin Malave Dilan is denied; it is further

ORDERED that plaintiffs' motion for partial summary judgment on the first cause of action is denied; it is further

ORDERED that plaintiffs' second cause of action is dismissed, on consent of all parties; it is further

ORDERED that defendants' and intervenors-defendants' motions for summary judgment dismissing plaintiffs' remaining causes of action are granted in their entirety and the complaint is dismissed.

Those assertions not specifically discussed herein have been considered and found to be unavailing.

This Memorandum shall constitute both the Decision and Order of the Court. This original **DECISION and ORDER** is being sent to the Office of the Attorney General. The signing of this **DECISION and ORDER** shall not constitute entry or filing under CPLR 2220. Legal counsel for the defendants is not relieved from the applicable provisions of that section with respect to filing, entry and notice of entry.

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[13] see Matter of Wolpoff v Cuomo, 80 NY2d 70, 78 [1992], citing to Matter of Schneider v Rockefeller, 31 NY2d 420, 427 [1972].

SO ORDERED
ENTER

Date: December 1, 2011
Albany, New York

EUGENE P. DEVINE, J.S.C.

PAPERS CONSIDERED:

1. Notice of Motion to Withdraw, Affirmation of Andrew L. Kalloch, Esq., dated August 30, 2011.
2. Notice of Motion for Request to Withdraw, Affirmation of Allegra Chapman, Esq., dated August 31, 2011.
3. Notice of Cross-Motion for Leave to File Amicus Curiae Brief, Affirmation of Leonard Kohen, Esq., Affidavit of Senator Martin Malave Dilan, with exhibits, dated August 17, 2011.
4. Notice of Motion for Summary Judgment, Affirmation in Support by David L. Lewis, Esq., with exhibits, and Memorandum of Law in Support of Motion, dated August 5, 2011.
5. Notice of Cross-Motion for Summary Judgment, Affirmation of Stephen M. Kerwin, Assistant Attorney General, with exhibits, and Memorandum of Law in Support of Cross-Motion and in Opposition of Motion for Summary Judgment, dated August 18, 2011.
6. Notice of Intervenors-Defendants' Motion for Summary Judgment and in Opposition to Plaintiffs' Motion for Summary Judgment, Affirmation of Peter Wagner, Esq., with exhibits, and Memorandum of Law in Support of Motion and in Opposition of Plaintiffs' Motion, dated August 18, 2011.
7. Plaintiffs' Reply Affirmation in Support of Motion for Summary Judgment and in Opposition to Defendants' Motions for Summary Judgment, with exhibits, and Reply Memorandum of Law, dated September 2, 2011.
8. Defendants' Reply Memorandum of Law, dated September 14, 2011.
9. Reply in Support of Intervenors-Defendants' Motion for Summary Judgment and in Opposition to Plaintiffs' Motion for Summary Judgment, dated September 15, 2011.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

ROGER GADDIS and ELDON MERKLIN, Protestants/Petitioners, v. ANDREW MOORE, JANET ANN LARGENT and LYNDA JOHNSON, Respondents/Proponents.	Sup. Ct. Case No. 118,405

RESPONDENTS/PROPONENTS ANDREW MOORE, JANET ANN LARGENT AND LYNDA JOHNSON'S BRIEF IN RESPONSE TO APPLICATION AND PETITION TO ASSUME ORIGINAL JURISDICTION AND REVIEW THE CONSTITUTIONALITY OF INITIATIVE PETITION NO. 420

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December 5, 2019

ATTORNEYS FOR RESPONDENTS/PROPONENTS

Appendix 9

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

ROGER GADDIS and ELDON MERKLIN, Protestants/Petitioners, v. ANDREW MOORE, JANET ANN LARGENT and LYNDA JOHNSON, Respondents/Proponents.	)	Sup. Ct. Case No. 118,405

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December 5, 2019

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INTRODUCTION

Every ten years, after the decennial census, states must redraw the district boundaries used to elect their state and federal representatives. This redistricting process, though at times arcane, is extraordinarily important. How districts are drawn can have an enormous impact on the results of subsequent elections: indeed, with today's powerful computers, elaborate voter databases and sophisticated analytical models, district maps can be "precisely engineered to assure [incumbent] control in all but the most extreme circumstances."[1]

In several states, like Arizona, Colorado, Missouri and Michigan, redistricting is handled by an independent commission tasked with drawing fair lines in an open and transparent process.[2] But in other states, like Oklahoma, the Legislature essentially has free reign to draw the lines as its members see fit. When legislators are in charge of constructing the districts in which they and their colleagues will run for office—particularly in a process that occurs behind closed doors, with little or no public input and few set criteria—lines can easily be manipulated to "subordinate adherents of one political party and entrench a rival party in power." *Ariz. State Leg. v. Ariz. Indep. Redistricting Comm'n*, 135 S.Ct. 2652, 2658, 2676-77 (2015). In short: representatives can choose their own voters. This is called partisan gerrymandering, and it undermines the very notion of representative government. *Id.*

Respondents Andrew Moore, Janet Ann Largent, and Lynda Johnson ("Proponents"), believe Oklahoma voters should choose their representatives, not the other way around. In October 2019, therefore, they joined with a bipartisan group of citizens to propose State Question 804, Initiative Petition 420 ("IP420"). This proposal, which would ensure that

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[1] "How Computers Turned Gerrymandering Into a Science," N.Y. Times (Oct. 6, 2017).

[2] *See, e.g., Rucho v. Common Cause*, 139 S.Ct. 2484 (2019) (noting that "numerous other States are restricting partisan considerations in districting … by placing power to draw electoral districts in the hands of independent commissions").

future redistricting decisions are made by an independent, politically balanced Commission protected from the undue influence of partisan politics, aims to present a comprehensive solution to prevent partisan gerrymandering and improve Oklahoma's redistricting process.

Relying almost entirely on cases from other states applying different constitutional provisions, Petitioners Roger Gaddis and Eldon Merklin ("Opponents") have attempted to derail this initiative before it can even be presented to the voters by concocting challenges under the "one general subject" rule and the First Amendment. But IP420's provisions plainly embrace one general subject: redistricting. And Opponents have failed to identify any protected First Amendment right—much less shown "clearly and manifestly" that any infringement on that right is not justified by the state's interest in combatting gerrymandering. Thus, Opponents' brief is devoted in large part to arguing the policy merits of the initiative. Such a policy debate should certainly be had; however, its proper place is before the voters, not this Court. Opponents have not met their burden to show that the measure is "clearly and manifestly" unconstitutional. Proponents thus respectfully request that the Court deny the pre-election challenge and permit the commencement of the signature-gathering process, so the Petition may timely proceed to a vote of the People.

ARGUMENT AND AUTHORITIES

I. Standard of Review: At the Pre-Election Stage, an Initiative Petition May Not be Invalidated Absent a "Clear and Manifest" Showing of Unconstitutionality

"The power of the people 'to institute change through the initiative process is a fundamental characteristic of Oklahoma government'": indeed, it is "[t]he first power reserved by the people." *In re Init. Pet. 403*, 2016 OK 1, ¶ 3, 367 P.3d 472. As this Court has repeatedly emphasized, "[t]he right of the initiative is precious," and "one which this Court is zealous to preserve to the fullest measure of the spirit and the letter of the law." *Okla. Oil &*

Gas Ass'n v. Thompson, 2018 OK 26, ¶ 4, 414 P.3d 345. "All doubt," therefore, "is to be resolved in favor of the initiative." *In re Init. Pet. 348*, 1991 OK 110, ¶ 5, 820 P.2d 772.

In deference to this precious right, moreover, this Court has "consistently confined [its] **pre-election** review of initiative petitions … to ***clear and manifest facial constitutional infirmities***." *In re Init. Pet. No. 358*, 1994 OK 27, ¶¶ 7, 12, 870 P.2d 782 (emphasis added); *see also In re Init. Pet. No. 365,* 2001 OK 98, ¶26, 55 P.3d 1048. Opponents thus bear a heavy burden: to warrant taking the issue away from the voters, they must show not just that the measure is unconstitutional, but that it is "***clearly and manifestly*** unconstitutional." *Thompson*, 2018 OK 26, ¶ 6 (emphasis added). They plainly cannot do so here.

II. Opponents Have Not Established a Violation—Much Less a "Clear and Manifest" Violation—of the "One General Subject" Rule

A. Amendments by Article are Subject to a Far More Lenient Test

Article 24, Section 1 of the Oklahoma Constitution, commonly known as the constitutional "single-subject rule," provides that "[n]o proposal for the amendment or alteration of this Constitution which is submitted to the voters shall embrace more than **one general subject** ...; **provided, however**, that in the submission of proposals for the amendment of this Constitution by articles, which embrace one general subject, **each proposed article shall be deemed a single proposal or proposition.**" *Id.* (emphasis added).

In cases involving the separate single-subject rule applicable to acts of the legislature, Art. 5, § 57, this Court has applied a fairly strict version of the "germaneness" test for determining whether a proposal encompasses but "one subject." *See, e.g., Douglas v. Cox Ret. Prop., Inc.*, 2013 OK 37, 302 P.3d 789. Proposed constitutional amendments, however, are subject to a lesser "one ***general*** subject" rule. Art. 24, § 1. And where, as here, the proposal is not only a constitutional amendment, but also an amendment "***by article***"—and

therefore ***by nature*** a more open and obvious change to the Constitution less likely to confuse or mislead voters—a ***much lesser standard of scrutiny*** applies. *In re Init. Pet. No. 319*, 1984 OK 23, ¶ 10, 682 P.2d 222. Although an amendment by article "is still required to relate to a single general subject," this Court has "indicate[d] clearly that the various changes need not meet" the more exacting forms of the germaneness test applicable to acts of the legislature or other forms of constitutional amendments. *Id.* ¶ 9. Rather, amendments by article need only satisfy the most "liberal" test articulated in *Rupe v. Shaw,* 1955 OK 223, ¶ 6, 286 P.2d 1094—a minimal standard discounted for other measures, but specifically approved in the "amendment by article" context. *Id.* ¶ 10.

Under this more liberal test, "provisions governing projects so related as to constitute a **single scheme** may be properly included within the same amendment." *Init. Pet. 403*, 2016 OK 1, ¶ 8 (quoting *Rupe*, 1955 OK 223, ¶ 6) (emphasis added). A proposal may contain incidental or supplemental measures, even if such measures could stand independently, if they are "necessary or convenient or tending to the accomplishment of one general design." *Id.* ¶ 10. So long as the provisions at issue are not "**essentially unrelated one to another**," an amendment by article will satisfy the one-general-subject criterion. *Thompson*, 2018 OK 26, ¶ 8; *In re Initiative Pet. No. 363*, 1996 OK 122, ¶ 15, 927 P.2d 558.[3]

[3] The importance of this distinction is best illustrated by comparing two similar "liquor by the drink" petitions. IP314 proposed to change the state's alcoholic beverage laws through a number of constitutional amendments. *See In re Init. Pet. No. 314*, 1980 OK 174, 625 P.2d 595. Noting that three of the measure's provisions would each be independent, "important, substantial change[s] in our Constitution," and that they were not so '"interrelated and interdependent' that they form[ed] an 'interlocking package'" with a "common underlying purpose," the Court concluded that it constituted "logrolling," and thus violated the single-subject rule. *Id.* ¶¶ 75-76. But the Court went on to invite proponents to submit the proposal another way: "either" by "three separate" petitions, or as one proposal in the form of "***amendment by article***." *Id.* ¶ 81 (emphasis added).

As explained below, Proponents submit that this initiative—aimed at the one general subject of redistricting—satisfies even the more exacting germaneness test applied in other circumstances. Under the more liberal standard applicable here, however, there can be no question that the Petition encompasses one *general* subject.

B. The Petition Satisfies the One-General-Subject Rule

1. The redistricting of state legislative districts and the redistricting of federal Congressional districts both relate to redistricting

Opponents first submit that, because the Petition would apply its proposed redistricting process to both state legislative districts and federal Congressional districts, it addresses two separate subjects. But the Petition sets forth a singular process for redistricting in Oklahoma. No matter how many objects of that process there may be,[4] redistricting itself is one general subject. *Cf., e.g., In re Init. Pet.403*, 2016 OK 1, ¶ 18 (upholding petition that addressed early education, common education, and higher education); *Okla. Ass'n of*

The proponents took the Court at its word, and a few years later, offered a similar measure, but this time as an "amendment by article." *In re Init. Pet. No. 319,* 1984 OK 23, 682 P.2d 222. This dramatically altered the Court's analysis:

> *In Re Initiative Petition No. 314*, 625 P.2d 595 (Okl. 1981) recognized that our constitution may be amended by article under Article 24, Section 1, and that **such an amendment may cover changes which would violate the single subject rule if not proposed in that format**. Proponents have complied with that procedure. While the amendment is still required to relate to a single general subject, our previous ruling indicates clearly that the various changes need not meet the test which was applied in *Initiative Petition No. 314*, and which resulted in the invalidity of that proposal.

Id. ¶ 9 (emphasis added). Rather, the Court noted, "we can apply to this question no more restrictive test than the one approved in both *Rupe v. Shaw*, 286 P.2d 1094 (Okl. 1955), and in *In re Initiative Petition No. 271*, 373 P.2d 1017 (Okl. 1962)." *Id.*

[4] Opponents currently identify two different subjects, federal and state redistricting. Yet, if Proponents were to start over with separate initiatives, (redundantly) setting forth the (identical) process for federal redistricting, on the one hand, and state redistricting, on the other, Opponents would surely be back arguing that the *state* measure addresses two separate subjects: House and Senate redistricting. After all, as they point out, the two chambers are typically apportioned through separate Acts. *See* Br. at 5 n.2.

Optometric Physicians v. Raper, 2018 OK 13, ¶¶ 10-17, 412 P.3d 1160 (upholding petition addressing both optometrists and opticians); *In re Init. Pet. 360*, 1994 OK 97, ¶¶ 19-20, 879 P.2d 810 (upholding petition addressing term limits for both Senators and Representatives).

Opponents do not point to a single Oklahoma case in support of their contention that federal and state districts must be treated separately. Instead, they rely exclusively on a case from Colorado, *In the Matter of the Title*, 2016 CO 55, 374 P.3d 460. That case, however, involved both different facts and different governing law.

First, the rule applied by the Colorado court was quite different from the rule that governs here. Colorado's Article V, § 1 requires that "[n]o measure shall be proposed by petition containing more than one subject, which shall be clearly expressed in its title." This is almost exactly like the *stricter* of Oklahoma's two single-subject rules, Article 5, § 57 ("[e]very act of the Legislature shall embrace but one subject, which shall be clearly expressed in its title"), which governs acts of the Legislature. As explained at length above, however, that standard simply does not apply here: Oklahoma applies a far less exacting standard to proposed constitutional amendments, and particularly amendments by article. If *Oklahoma* cases applying Article 5, § 57 do not apply, then surely *Colorado* cases applying that rule's equivalent are even more inapposite.

Second, Colorado's Constitution had long set forth quite different processes for federal and state redistricting: a Reapportionment Commission for state legislative districts, and the General Assembly for federal Congressional districts. Emphasizing this history of two "distinct processes," the Court held that state legislative and congressional redistricting were two separate subjects. *Id.* ¶ 33.[5] The Oklahoma Constitution, however, does not lay out

[5] Notably, though the Colorado court suggested that addressing state and federal redistricting in one initiative could constitute logrolling because voters might register distinct opinions

two separate and distinct processes (indeed, it does not even mention congressional districts). Instead, Oklahoma's state House, state Senate, and federal Congressional districts all get reapportioned through the same highly political and impenetrable process: the Oklahoma Legislature.[6] In similar circumstances, a Florida court (on whose opinion Opponents elsewhere rely) *rejected* the notion that joining state legislative and congressional redistricting in the same initiative violated the single-subject rule, even under a stricter standard. *Advisory Opinion*, 926 So.2d 1218, 1225-26, 1229 (Fla. 2006).

2. Both the "who" and the "how" of redistricting relate to redistricting

Opponents next urge that IP420 violates the single-subject rule because it "would change both who does the redistricting and how redistricting is accomplished." Again, however, the "who" and the "how" of redistricting relate to a single subject: *redistricting*. *Cf., e.g., In re Init. Pet. 319*, 1984 OK 23, 682 P.2d 222 (upholding initiative that set forth the "who" and "how" of alcohol regulation, by replacing the Alcoholic Beverage Control Board with the ABLE Commission, and also, e.g., authorizing sale of liquor by the drink, requiring sales to wholesale distributors on equal basis, and providing for taxes and other regulations); *In re Init. Pet. 363*, 1996 OK 122 (upholding initiative that set forth the "who" and "how" of casino gambling, creating a Gaming Commission to regulate and enforce related rules and

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regarding state legislative and congressional redistricting reforms, Colorado voters ultimately approved the separate proposals by the *exact same margins* in 2018. *See, e.g.*, https://www.coloradoan.com/story/news/politics/elections/2018/11/06/colorado-election-results-amendments-y-and-z-pass-changing-redistricting-process/1894902002/.

[6] Opponents note that the Legislature has always passed separate legislation to reapportion Congressional districts, "thus avoiding a single-subject challenge under Okla. Const. art. V, § 57." Br. at 5. Assuming this was in fact the motivation for separate congressional acts (and for separate acts for state house and for state senate districts, *see, e.g.*, Laws 2011, SB821, c.289; HB2145, c.285), the Legislature was attempting to avoid a *stricter* single-subject requirement than the one applicable here. By contrast, prior constitutional initiative petitions have addressed state and federal redistricting together. *See* SQ760 (available at https://www.sos.ok.gov/gov/questions.aspx).

setting out various minimum requirements).

Here, too, Opponents are forced to look outside Oklahoma for any support for their contention. They point to an opinion by a Florida court, *Advisory Opinion*, 926 So.2d 1218 (Fla. 2006), which held an initiative that both created an independent commission and required it to draw single-member, contiguous districts violated that state's single-subject rule.[7] Once again, however, that case was applying a much stricter test. Article XI, § 3 of the Florida Constitution, which requires initiative petitions to "embrace but one subject," reads like Oklahoma's more exacting Article 5, § 57. Further, because the Florida initiative process "does not afford the same opportunity for public hearing and debate" as amendments proposed by the Legislature, Florida courts actually apply a *stricter* standard to initiative petitions, 926 So.2d at 1224—the *opposite* of Oklahoma's approach.[8]

IP420 plainly complies with Oklahoma's more liberal germaneness test, however. The "who" and the "how" of redistricting—including, *inter alia*, the data to be used, the process to be followed, and the criteria to be employed[9]—are the very details necessary to set forth a "single scheme to be presented to voters" to improve the redistricting process in

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[7] Notably, the Florida initiative dealt not just with the *criteria* for drawing lines, but with the *type* of districts themselves: it would have changed Florida law, which allowed for multi-member districts, to permit single-member districts only—a major structural change. *Id.* at 1225-26. Other states, however, have upheld even broader initiatives against single-subject challenge. *See, e.g., Ritter v. Ashcroft*, 561 S.W.3d 74, 86 (Mo. Ct. App. 2018).

[8] *See, e.g., Rupe*, 1955 OK 223, ¶ 6 (noting "the distinction between ordinary legislation and proposed constitutional amendments, where there is a period of publicity in which those interested may acquaint themselves with the purpose thereof" as a reason a more lenient standard applies to constitutional initiatives).

[9] Opponents object to the Petition, e.g., specifying how prisoners should be counted for purposes of drawing districts, and prohibiting consideration of party affiliation or voting history except to assess political fairness. Certainly, these details—like many others—may be "controversial," Br. at 7-8; however, that does not make them any less germane to redistricting. *See, e.g.*, https://www.prisonersofthecensus.org/news/2009/09/25/okreport/ (explaining how counting prisoners where incarcerated contributes to gerrymandering); *cf., e.g., OIPA v. Potts*, 2018 OK 24, ¶¶ 20-22, 414 P.3d 351.

Oklahoma. *Init. Pet. 403*, 2016 OK 1, ¶ 12. As in *Initiative Petition 403*, "[e]ach section of the proposed amendment is reasonably interrelated and interdependent, forming an interlocking package deemed necessary by the initiatives' drafters" to combat partisan gerrymandering and improve the redistricting process, and "[t]he proposal stands or falls as a whole." *Id.* (internal quotation marks omitted).

Certainly, as Opponents note (at 8), "[r]easonable minds can and will differ" on some of the measure's provisions. "[I]f a voter agrees," for example, with the creation of an independent Commission "but does not agree" with the redistricting criteria, "then the voter must choose whether to approve the proposal based on such considerations." *Init. Pet. 403*, 2016 OK 1, ¶ 12. But this is not the test for determining multiplicity of subjects (if it was, any petition with more than one subsection could be struck down, effectively eviscerating the initiative power). To the contrary: this Court has repeatedly held that "**[s]uch choices are the consequence of the voting process rather than any constitutional defect in the proposal.**" *Id.*; *see also Potts*, 2018 OK 24, ¶¶ 20-22 (similar). Where, as here, the Petition's provisions are "germane to a singular common subject and purpose" and not "essentially unrelated one to another," it is enough to satisfy Article 24, § 1. *Id.*

3. The Petition does not eliminate the right of initiative or referenda with respect to redistricting (though if it did, it would relate to redistricting)

Opponents next submit that IP420 contains another, hidden, subject: "eliminat[ing] the right to pass and disapprove redistricting legislation by initiative or referendum." Br. at 9. But the Petition no more "voids the referendum power" by taking redistricting decisions out of the hands of the Legislature than does any other constitutional amendment—which, by definition, promulgates law not subject to either the Legislature or the various checks thereon

(e.g., bicameralism, veto, and referendum).[10] Nor does the measure "vitiate[] the people's power to propose initiatives": if the People want to change IP420's redistricting scheme (or simply propose new maps), they need only introduce another petition and amend it.[11] *Init. Pet. 348*, 1991 OK 10, ¶ 16, 820 P.2d 772 (rejecting an almost identical argument).

Even assuming, *arguendo*, IP420's exercise of direct democracy here did limit future exercises of direct democracy with respect to redistricting, this would not make it a separate "subject." Any such limitation would simply be a consequence of the new redistricting process, which puts redistricting decisions in the hands of the Commission rather than the Legislature. Opponents' arguments "are at their root policy arguments ... best made to Oklahoma voters." *Potts*, 2018 OK 24, ¶ 21. No matter how "novel" or "momentous," so long as the initiative's changes are "germane to a singular common subject and purpose" and not "essentially unrelated one to another," they satisfy the "one general subject" rule. *Id.*; *see also Init. Pet. 348*, 1991 OK 10, ¶ 12 ("While the amendment, if adopted, may indeed affect other articles of the constitution ... that is insufficient reason for this court today to deny the people of Oklahoma the right to vote on this Petition").

4. *Establishing a limited role for the Court in the redistricting process relates to redistricting*

Finally, Opponents submit that, because "[t]he judicial branch has no role in selecting plans or selecting Commissioners under the current constitutional system," the increased role

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[10] Indeed, under current law, if the Legislature fails to adopt a plan within a certain timeframe, a backup Commission of three Democrats and three Republicans draws the lines, and they are not subject to veto or referendum.

[11] Opponents are incorrect that § 5 of IP420, entitled "Authority of the Legislature," would restrict the power of the *People* with respect to future redistricting initiatives. Section 5 makes clear that the Commission's powers are exclusively reserved to it and shall not be altered or abrogated by "the Legislature"; however, it says no such thing with respect to the "People," separately referenced in that same provision. Even if it did, however, all the People would have to do to change that is propose an amendment to § 5 in any subsequent petition.

of the judiciary in IP420's redistricting process constitutes an impermissible separate subject. They are incorrect, on both the facts and the law.

It is true that, to reduce partisan influence, IP420 contemplates a limited but specific role for the judiciary. The Chief Justice would select a Panel of retired appellate judges to oversee the creation of the Commission, as well as a Special Master to serve in an administrative role. And if the Commission is unable to reach consensus on a redistricting plan in a certain timeframe, then the Supreme Court serves as the "fallback mechanism"—once the Special Master creates a report advising the Court of available plans, the Court has 30 days to approve a plan that complies with the requisite criteria.

It is not true, however, that involving the Court in the redistricting process is particularly novel. To the contrary: particularly with respect to Congressional redistricting, the judiciary has long served as the unofficial "fallback mechanism" when the legislature fails to fulfill its duties. *See, e.g., Alexander v. Taylor*, 2002 OK 59, 51 P.3d 1204 (affirming trial court's selection of a redistricting plan from various proposals). In doing so, this Court has made clear that "reapportionment is **not a strictly legislative enterprise**," and "*both* state legislatures and state courts are appropriate 'agents of apportionment.'" *Id.* ¶¶ 11-17 (bold added).[12] The fact that this role would be made explicit in IP420, and the Court would have the benefit of a Special Master report in the event its involvement is required, does not dramatically change the nature of the Court's role in the redistricting process.

Nor is the Chief Justice's role in selecting the Panel and Special Master that unusual. Under existing law, the Chief Justice appoints members of various other state agencies and commissions, presumably for much the same reason: to reduce partisanship in the selection

[12] Indeed, in announcing the upcoming House redistricting effort, Speaker McCall noted his Redistricting Committee already plans to "enhance the process further by soliciting input from the Oklahoma Supreme Court." Speaker Charles McCall, Press Release, Sept. 4, 2019.

process. *See, e.g.*, Okla. Const. Art. 29, § 1 (Ethics Commission); Art. 6, § 10 (Pardon and Parole Board); 74 O.S. § 4103 (State Capitol Preservation Commission).

Even if IP420 did propose an enormous shift in the role of the judiciary, moreover, it would not constitute a separate *subject*. The shift from partisan politicians to nonpartisan officials is just one part of the "interlocking package deemed necessary by the initiatives' drafters" to combat partisan gerrymandering and improve the redistricting process. *Init. Pet. 403*, 2016 OK 1, ¶ 12. Indeed, this Court has recently rejected nearly identical arguments with respect to "expanding the reach" of executive agencies "into the legislative realm." *Thompson*, 2018 OK 26, ¶ 16; *see also Potts*, 2018 OK 24, ¶ 23 (similarly rejecting contention that granting Board of Equalization "novel" powers that "would negatively affect the balance of separation of powers" constituted a separate subject).[13]

III. Opponents Have Not Established a First Amendment Violation—Much Less a *Clear and Manifest* First Amendment Violation

A. The First Amendment Does Not Prohibit Restrictions on Speech and Association For Policymaking Officials—Particularly Where, As Here, Those Restrictions Are Limited, Viewpoint-Neutral, and in Service of Important State Interests

Opponents finally submit that IP420's various restrictions on those who may serve on the Commission—designed to prevent undue partisan influence and conflicts of interest—violate the First Amendment. But "not all limits on [otherwise protected] activities are unconstitutional." *In re Init. Pet. No. 341*, 1990 OK 53, ¶ 4, 796 P.2d 267. To establish a violation, Opponents must show—at this stage, "clearly and manifestly"—1) there is a protected *right* to serve on the Commission unqualified by the conditions at issue, and 2) the

[13] Indeed, even under a far stricter standard, the Florida court found that provisions of a redistricting petition requiring the Chief Justice to nominate three members of a commission and "provid[ing] for judicial apportionment if the commission fails to complete its duty" did not constitute a separate subject. *Advisory Opinion*, 926 So. 2d at 1226.

People lack adequate justification for those conditions. *Id.* They cannot.

As an initial matter, no one has a *right* to serve on a government Commission. *Cf., e.g., Fair v. State Elec. Bd.*, 1994 OK 101, 879 P.2d 1223. Opponents thus rely on a line of so-called "unconstitutional condition" cases, which hold that, although individuals have no *right* to a governmental benefit, the state nevertheless may not *condition* a benefit on political belief and association absent a sufficient government interest. Br. at 13 (citing, *e.g., Elrod v. Burns,* 427 U.S. 347 (1976); *Rutan v. Repub. Party*, 497 U.S. 62, 86 (1990)). But they glaringly ignore the express exception set forth in these same cases: for "***policymaking*** positions," such as the ones at issue here, the state properly *may* consider partisan affiliation—even in a decidedly non-viewpoint-neutral manner—without violating the First Amendment. *Elrod*, 427 U.S. at 367, 372 (explaining that "policymaking positions" can be conditioned on speech and association, so as to "insure that policies which the electorate has sanctioned are effectively implemented"); *Rutan,* 497 U.S. at 74 (reaffirming this exception); *see also Phillips v. Wiseman*, 1993 OK 100, ¶ 4, ¶ 857 P.2d 50, 52 (upholding condition based on political affiliation for the deputy commissioner of labor).

Here, the members of the Commission will undoubtedly be policymakers. And as discussed above, political affiliation—specifically, a balance of party affiliation uninfluenced by extreme partisan conflict of interest—"is an appropriate requirement for the effective performance" of the Commission. *Branti v. Finkel*, 445 U.S. 507, 518 (1980); *see also Sowards v. Loudon Cnty., Tenn.*, 203 F.3d 426, 436 (6th Cir. 2000) (political affiliation is a proper qualification for "positions that are part of a group of positions filled by balancing out political party representation, or that are filled by balancing out selections made by different governmental agents"). For this reason, many other states, "as a means to curtail partisan gerrymandering," have established redistricting commissions with similar qualifications.

Ariz. Indep. Redistricting Comm'n, 135 S.Ct. at 2662. Oklahoma, too, has a constitutionally-protected interest in structuring its government and deciding who will be responsible for redistricting. *Gregory v. Ashcroft*, 501 U.S. 452, 462-63 (1991) ("[T]he authority of the people of the States to determine the qualifications of their most important government officials ... is a power reserved to the States under the Tenth Amendment and guaranteed them by [the Guarantee Clause]," and judicial scrutiny is not "so demanding where we deal with matters resting firmly within a State's constitutional prerogatives").

Opponents' brief studiously avoids stating what type of scrutiny should be applied to the restrictions at issue. This is because, while restrictions on First Amendment rights are typically subject to strict scrutiny, that is not the case for, e.g., state laws that are part of a "State's comprehensive election scheme." *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (citing *Anderson v. Celebrezze,* 460 U.S. 780 (1983)). Because states are entitled to regulate their own elections to safeguard the democratic process, and such regulations will invariably impose some burden upon political association and expression, "a more flexible standard applies": the court "must weigh the character and magnitude of the asserted injury" against the state's "justifications for the burden imposed by its rule, taking into consideration the extent to which those interests make it necessary to burden the plaintiff's rights." *Id.* at 434; *see also, Utah Rep. Party v. Cox*, 892 F.3d 1066, 1076-77 (10th Cir. 2018) (noting the state's "legitimate interest in providing order, stability and legitimacy to the electoral process," and applying the "now-familiar *Anderson-Burdick* balancing test"). And where, as here, "regulations impose lesser burdens, a State's important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions." *Id.*

Similarly, the U.S. Supreme Court has made clear that laws disqualifying persons from participating in government on the basis of conflict of interest, or the appearance

thereof, are subject to lesser scrutiny. *Nevada Comm'n on Ethics v. Carrigan*, 564 U.S. 117, 119 (2011) (rejecting First Amendment challenge to law requiring legislators to recuse from voting on matters with which they or a family member had a conflict of interest); *see also, e.g., U.S. Civil Serv. Comm'n v. Nat'l Ass'n of Letter Carriers AFL-CIO*, 413 U.S. 548, 556 (1973); *Broadrick v. Okla.*, 413 U.S. 601, 616 (1973) (upholding Hatch Act and Oklahoma's equivalent, which proscribe public employees from, e.g., serving on a political party committee, running for political office, and making political contributions, because "[n]either the right to associate nor the right to participate in political activities is absolute," and the restrictions served an important state interest—"the impartial execution of the laws").[14] IP420 would (temporarily) exclude from Commission service those most likely to have a conflict of interest in drawing district lines: people whose political careers are most affected by district lines (elected office-holders and candidates); people with a substantial interest in lines being drawn to advantage particular parties or candidates (political party officers and staffers); people whose employment may depend upon lines being drawn to favor particular parties or candidates (employees of the Legislature or lobbyists); and people who have a vested personal and/or financial interest in these individuals (e.g., family members).[15] Such restrictions are permissible under the First Amendment. *Carrigan*, 564 U.S. at 125.

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[14] Oklahoma has a number of such laws. *See, e.g.*, 74 O.S. Ch. 62, App. 1, Rule 4.7; 74 O.S. Ch. 62, App. 1, Rule 1.6. Indeed, Oklahoma—without constitutional infirmity—disqualifies some individuals from certain positions altogether, to avoid even the appearance of partisan or financial conflict of interest. A judicial officer of Oklahoma shall not "hold office in a political party or organization." Okla. Const. Art. 7B, § 6. An Oklahoma legislator is disqualified, during her term of office, from any state office or commission created or benefitting from emolument increase during the legislator's term, and from any Governor or legislative appointment. Art. 5, § 23.

[15] The Supreme Court has recognized the importance of such measures: "[i]ndependent redistricting commissions ... have succeeded to a great degree [in limiting the conflict of interest implicit in legislative control over redistricting.] They thus impede legislators from

Opponents complain that, because the Commission will be composed of a balance of members registered with the two largest political parties, it cannot put ***any*** limits on political activity, asserting "[t]here can be no vital interest in requiring some political activity but prohibiting other political activity." Br. at 15. They offer no support for such an assertion. To the contrary: thirty years ago, this Court rejected a First Amendment challenge to the initiative creating Oklahoma's Ethics Commission on the ground of the state's overriding interest. *In re Init. Pet. No. 341*, 1990 OK 53, 796 P.2d 267. Noting that the Commission was set up to, *inter alia*, prevent scandal, "avoid conflict of interest," and ensure that "the operation of government be properly conducted so that public officials are independent and impartial," the Court found that "[n]ot only do states have a legitimate interest 'in fostering informed and educated expressions of the popular will in a general election,' they have a compelling state interest in '[m]aintaining a stable political system.'" 1990 OK 53, ¶¶ 13-14 (cites omitted). Notably, the Ethics Commission, like the proposed redistricting Commission, requires a balance of members registered with the two major political parties, Okla. Const. Art. 29, § 1(B); it also disqualifies from service those who are candidates for elected office, hold public office, are employed by any state agency, or "engage in any political activity" except registering to vote and private expression. 74 O.S. Ch. 62, App. 1, Rule 1.5(A).[16]

The People's interest in setting qualifications for membership on the proposed redistricting Commission similarly justifies the minimal burdens on any otherwise protected

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choosing their voters instead of facilitating the voters' choice of their representatives." *Ariz. Indep. Redistricting Comm'n*, 135 S.Ct. at 2676 (brackets in original).

[16] Similarly, members of the Judicial Nominating Commission must satisfy both political party balance requirements and similar conflict of interest limitations: they cannot "hold any other public office ... or appointment or any official position in a political party" and they are "not [] eligible, while a member of the Commission and for five (5) years thereafter, for nomination as a Judicial Officer." Okla. Const. Art. 7B(a)(3), (d), & (f).

right at issue here. Oklahoma has at least an adequate, and indeed compelling, interest in both political balance and combatting conflicts of interest in drawing the districts from which its citizens elect their representatives. The qualifications, which require equal representation of the largest political parties, exclude career politicians and lobbyists, and otherwise limit conflicts of interest, are aimed at "the problem of partisan gerrymandering—the drawing of legislative district lines to subordinate adherents of one political party and entrench a rival party in power." *Ariz. Indep. Redistricting Comm'n*, 135 S.Ct. at 2658. As the U.S. Supreme has recognized, "'partisan gerrymanders ... [are incompatible] with democratic principles.'" *Id.* (brackets in original) (quoting *Vieth v. Jubelirer*, 541 U.S. 267, 292 (2004)).

Numerous states have independent Commissions like the one proposed in IP420, with similar conditions on Commission membership. Yet, such conditions have never been held to violate the First Amendment. Indeed, in the one state where such qualifications have been challenged (Michigan, where an almost identical challenge is currently pending in district court), the court recently refused to preliminarily enjoin the Commission from taking effect with such conditions because, it found, plaintiffs were unlikely to succeed on the merits. *Daunt v. Benson*, 2019 WL 6271435, *9, 13-15 (W.D. Mich. Nov. 25, 2019). Applying the "*Anderson-Burdick* framework," the court concluded that there, as here, any burden on speech and association rights is both minimal and temporary, and "the State's interests in designating eligibility criteria for an effective redistricting commission are more than sufficient to justify the challenged provisions." *Id.* *15.

B. Even if There Were a First Amendment Concern with Some Provisions of IP420, Moreover, That Would Not Warrant Striking the Petition

In considering Opponents' First Amendment challenge, moreover, it is important to keep in mind two things: 1) the applicable standard at this pre-election stage; and 2) the

remedy. Proponents submit there is no First Amendment violation here under any standard. But even if Proponents are incorrect, it would not warrant striking the Petition.

This is a *pre-election* challenge to an initiative that has not yet even been put to a vote of the People, much less become law. As such, it is essentially a request for an advisory opinion. *Cf., e.g., Initiative Pet. 358*, 1994 OK 27, ¶7. Furthermore, it comes to the Court as an original action, with the attendant space limitations and abbreviated briefing schedule; without having had an opportunity to develop the record or arguments before the trial court; and by parties who may or may not have standing to object to these provisions in the first instance. These inherent limitations—along with the deference given to "the fundamental and precious right of initiative petition," *Thompson*, 2018 OK 26, ¶¶ 5-6—are why this Court has "limited such pre-election review to clear or manifest facial constitutional infirmities." *In re Init. Pet. 360*, 1994 OK 97, ¶¶ 10-11, 879 P.2d 810 (declining to consider First Amendment challenge). There are certainly no such infirmities here: as explained above, "[n]either the right to associate nor the right to participate in political activities is absolute," and similar qualifications have been upheld by numerous courts, including this one.

Finally, Opponents' First Amendment objection applies only to a small part of an initiative that contains a severance clause, allowing any part deemed unconstitutional to be severed without invalidating the whole. IP420, § 7. Initiative Petition 420 should not be withheld from the voters on the basis of Petitioners' First Amendment challenge.

CONCLUSION

Proponents thus respectfully request that the Court deny Opponents' constitutional challenge and permit the commencement of the signature-gathering stage.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENTS/ PROPONENTS

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing was served by U.S. Mail, postage prepaid, this 5th day of December, 2019 to:

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State Chamber Welcomes Karma Robinson to Staff

October 6, 2014

State Chamber Welcomes Karma Robinson to Staff

Brings wealth of experience to Vice President of Membership position

Oklahoma City (October 6, 2014) – The State Chamber of Oklahoma is proud to welcome Karma Robinson to fill a vacant position as Vice President of Membership.

Robinson has extensive experience in the world of development and fundraising, having worked for non-profit organizations like the Oklahoma Council of Public Affairs and numerous political campaigns including Governor Mary Fallin and U.S. Senator James Inhofe.

"We are very excited to bring someone of the caliber of Karma Robinson to our team," said State Chamber of Oklahoma president and CEO Fred Morgan. "Membership is an integral part of making the State Chamber the voice of business at the State Capitol."

Robinson will be part of the Membership Department in charge of recruitment and retention of businesses to the State Chamber.

"Over the years, I have been blessed to work with community leaders all across our state on key issues and campaigns, and it was never a surprise to learn many were also active State Chamber members," said Robinson. "The State Chamber provides leadership that is critical to the growth of our state. I look forward to working with the outstanding Chamber Staff and introducing others to this dynamic organization."

Karma is a native Oklahoman. She is a graduate of the University of Oklahoma where she met her husband Brett. Together they have two daughters, Claire and Natalie.

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Appendix 10

Tags: Press Release (https://www.okstatechamber.com/blogtag/press-release)

GOVERNMENT

Bucking Ethics Proposal, Legislators Become Lobbyists

by Trevor Brown
February 19, 2019

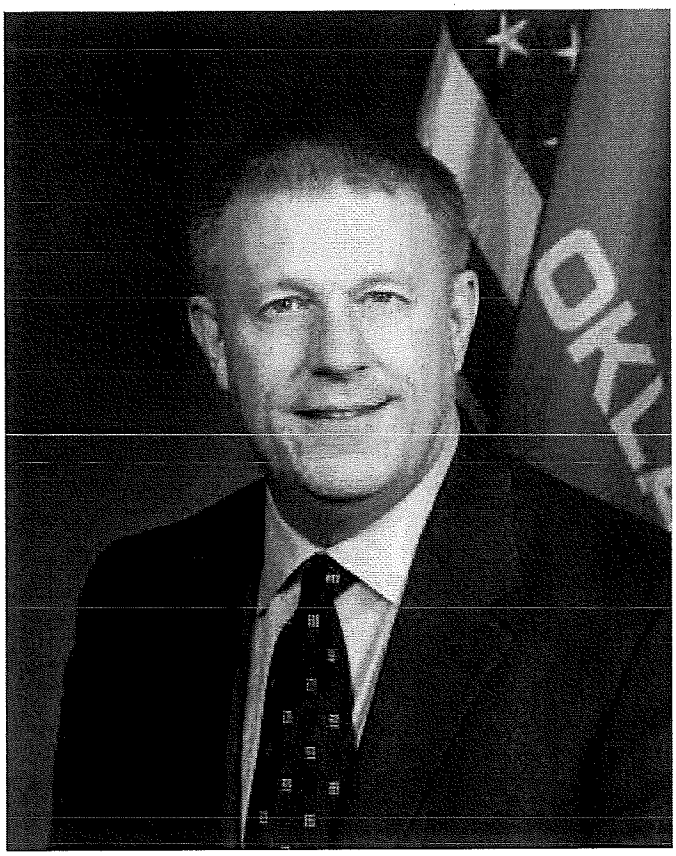
Former state representatives, from left, Pat Ownbey, Josh Cockroft and Bobby Cleveland became lobbyists after serving as legislators last session.

Three former legislators who left office in November are now lobbyists, embodying a practice that state ethics officials have

unsuccessfully tried to ban in the face of opposition from the Legislature.

Oklahoma Ethics Commission records show former Reps. Pat Ownbey, Josh Cockroft and Bobby Cleveland – all Republicans who served in last year's legislative class – registered as lobbyists within weeks or a few months of finishing their terms in mid-November.

Another former lawmaker, Rep. Kevin Calvey, R-Oklahoma City, who is now an Oklahoma County commissioner, registered as a lobbyist in January and then terminated his lobbying for an anti-abortion group earlier this month after concerns emerged about whether an actively serving elected official should also be a lobbyist.



Since Oklahoma is one of the few states without a mandatory waiting period of any time before lawmakers can become lobbyists, the career changes are all legal.

But the so-called "revolving door" of lawmakers becoming lobbyists almost immediately after leaving office has been under increased scrutiny since

the Ethics Commission tried to add the cooling-off period last year.

The commission first passed the rule in February 2018 on a 5-0 vote.

Supporters argued the two-year waiting period would reduce the potential for conflicts of interest to emerge from lawmakers who are thinking about becoming lobbyists and prevent lawmakers-turned-lobbyists from having undue influence over their former colleagues.

But the Legislature shot down the plan in May, rejecting a series of ethics rules that included the cooling-off period. Ethics rules take effect unless the Legislature votes to reject them.

Cleveland, Cockroft and Ownbey were among those who supported throwing out the rules.

Cockroft, who who took a job with the Oklahoma Association of Realtors, and former Rep. Pat Ownbey, R-Ardmore, now employed by Gap Consulting and registered to lobby on behalf of the Oklahoma Board of Nursing, the Oklahoma Banking Department, Oklahoma Department of Consumer Credit, the Independent Finance Institute, the Community Bankers Association of Oklahoma, Oklahoma Energy Producers Alliance, Association of Professional Oklahoma Educators, John and Donne Brock Foundation and the Oklahoma Pharmacists Association, did not respond to Oklahoma Watch requests for comment.

Gov. Kevin Stitt has made agency lobbyists a focus of his administration. Soon after taking office, he ordered state agencies with contract lobbyists to provide him information about the arrangements and copies of the contracts. This would appear to affect several of Ownbey's clients.

Cleveland, who lost his primary election last year and is now lobbying for the Oklahoma Corrections Professionals association, said he sees no problem working as a lobbyist shortly after leaving office.

"First of all, I'm not paid with state money, and even if I were, I don't think it is anyone's business what we do when we're private citizens," he said. "All that matters is getting the most qualified person for the job."

Cleveland added that he has not heard any concerns from his former colleagues while he has been lobbying this year.

But some lawmakers support a cooling-off period.

Rep. Tom Gann, R-Inola, is among those who spoke out in debate and during the Oklahoma Ethics Commission public hearing in support of the rule.

"We as legislators need to be above board and set a tone of integrity at the very highest levels of state government," he said during last year's House floor debate on the rule. "I think the Oklahoma House of Representatives should set a higher standard on this."

This year's Legislature, which features a record freshman class making up nearly 40 percent of the body, will get to vote on the rule again. The Ethics Commission again approved the cooling-off period in September.

Gann said he hopes lawmakers look at the rule differently this year. He said legislators need to realize that even the perception of impropriety should be taken into account.

"Waiting periods are common in the private industry," he said, noting the state Constitution blocks lawmakers from contracting with the state two years after leaving office. "A contract for employment is really no different, in my opinion, when it is the experience of the legislator that is being monetized."

The rule would grandfather in lawmakers currently registered as lobbyists, which means Cleveland, Cockroft and Ownbey wouldn't be affected.

Cleveland said based on what he's heard, he doesn't think there will be a different result this year.

"I haven't talked to anyone who supports it," he said. "I think it will sink like a stone."

Related

HIRED GUNS

Published — October 12, 2006
Updated — May 19, 2014 at 12:19 pm ET

STATEHOUSE REVOLVERS

Study finds more than 1,300 ex-legislators among 2005 state lobbying ranks

Kevin Bogardus

Over a three-year period ending in 2005, nearly 1,600 former lawmakers across the country were registered at some point to lobby state legislatures for special interests, according to an analysis by the Center for Public Integrity. More than **1,300 ex-lawmakers**

Changing Sides (https://publicintegrity.org/2011/08/19/5899/ch sides)

Many legislators, after leaving office, take jobs lobbying on the same issues that they debated as lawmakers. Here are some examples:

As an Oregon Republican state legislator, Paul Phillips was fined a record $17,000 for, among other charges, hinting that he would help his then-consulting client, Nike, on upcoming tax legislation, according to a state hearing officer. Phillips went on to lobby for the shoe giant along with many other clients at PacWest, his own lobby shop.

As a Republican state senator from Nebraska, Loran Schmit got his first bill promoting the alternative fuel ethanol enacted in 1971. A year after being defeated in his re-election campaign in 1992, Schmit returned to the statehouse as a lobbyist and represents several ethanol interests at his own firm, Schmit Industries, today.

Once the chairman of Missouri's Joint Committee on Gaming and Wagering, former Democratic Rep. Chris Liese now lobbies for several gambling industry interests. State law forbids lawmakers to be employed by a casino until two years after they leave office. So to lobby for Isle of Capri Casinos, he got clearance from the Missouri Ethics Commission, the Missouri Gaming Commission, and

from his own lawyer, according to TheKansas City Star. Gaming officials ruled that lobbying under contract was not covered by the ban.

Jaime Capelo co-authored legislation that capped medical liability rewards in 2003 as a Democrat in the Texas House of Representatives. Three years later, he now lobbies for several clients that benefited from his landmark bill: trade groups associated with the health care industry. One client, the Texas Alliance for Patient Access, prominently lists Capelo on its Web site as a member of its "Lobby Team," along with two other former legislators.

Terry Wanzek served as a Republican in the North Dakota legislature for a decade and chaired the Senate Agriculture Committee before exiting the statehouse after 2002. Starting that year, he put his skills to use as a board member of the North Dakota Grain Growers Association. He registered as a lobbyist when he served a year as the organization's president through January 2006. "I am a self-employed farmer," said Wanzek, who is running for his old Senate seat again. "It was just like a teacher being president of the teachers union."

John Foran helped create San Francisco's Metropolitan Transportation Commission and provide $300 million in transportation funds to localities during more than two decades of combined service as a California Democratic representative and senator. In 2005, the lobbying clients of Foran and his firm included a variety of city transportation authorities — including the MTC.

It's all relative
(https://publicintegrity.org/2006/12/20/5897/its-all-relative)

By **Elspeth Reeve**
(https://publicintegrity.org/authors/elspeth-reeve)
December 20, 2006

From lobbyist to legislator
(https://publicintegrity.org/2006/10/16/5901/lobbyist-legislator)

By **Nadine Elsibai**
(https://publicintegrity.org/authors/nadine-elsibai)
October 16, 2006

(http://projects.publicintegrity.org/hiredguns/reg.aspx) were registered to lobby in 2005 alone.

The study findings show that the revolving door between public and private service turns just as easily in the state arena as it does in Washington D.C. on the federal level. And when the former state legislators moved into their new roles, Center research found, they often emerged as some of the most powerful, well-connected statehouse lobbyists.

"They sell that they have unique access because they're a former legislator," said Blair Horner, the legislative director for the New York Public Interest Research Group, a state government watchdog organization.

As lobbyists, they work to further the interests of companies and organizations as diverse as the 162,000 state bills introduced nationwide last year. Their clients run the gamut of special interests: from private companies to public schools, from trade associations to labor unions, from political watchdogs to political parties.Ex-legislators often start boutique shops or join established blue-chip firms as a name partner. Among those registered to lobby in 2005, more than 200 signed up under a lobbying firm or consulting group that included their name in the title. Others were hired by companies on a contract basis or became staff members of companies and associations looking for a voice at the statehouse.

Legislators become lobbyists because "they have skills and expertise to do so," said Peggy Kerns, director of the Center for Ethics in Government at the National Conference of State Legislatures. "They are effective. They become experts on certain issues."

In many states, the job of a legislator draws low pay despite long hours. For their elected officials, the inclination to enter the influence business can be particularly strong.

"I can stay in the state Senate, which I've been in for 16 years, attend meetings at night and weekends, and stand for re-election at $25,000 a year with per diem, or I can go out in the hall and not have to go to meetings at night, only follow the legislation that my clients care about, and make $200,000 a year," said former Indiana Democratic legislator Louis Mahern, who is currently a registered lobbyist. "You can only resist that for so long. I have to start thinking about my financial future or my children's education."

The Center's analysis included a six-month-long, state-by-state survey that compared the names of former legislators with the names of lobbyists registered in 2003, 2004 and 2005. The initial identification matches were confirmed and supplemented through hundreds of telephone calls to officials and political observers in all 50 states to ensure that the former legislators and the current lobbyists were the same people. The Center also attempted to contact each individual to obtain direct confirmation.

Center research found that former **government staffers** (http://projects.publicintegrity.org/hiredguns/report.aspx?aid=769) across the country have gone on to become well-connected lobbyists. Although much rarer, researchers also discovered that some lobbyists have abandoned their roles as advocates to the legislature

to become **elected members** (http://projects.publicintegrity.org/hiredguns/report.aspx?aid=761) .The lists of ex-legislators registered to lobby accompanying this report focus on those registered in 2005. Center researchers attempted to identify as many legislators-turned-lobbyists as were registered in each state despite the wide variation among state laws defining what practices require registration. Many lobbyists revolved from the legislature in recent years; others had not held office for decades.

Everything's bigger in Texas

The Center's study of 2005 records found the most legislators-turned-lobbyists in Texas: 70 ex-lawmakers were registered that year. Florida was second with 60 "revolvers," and Minnesota and Illinois ranked next with 50 each. Following in the list were Missouri (46), Massachusetts and Michigan (43 each) and Georgia (41).

Proportionately, New Hampshire, Utah and Oklahoma had the highest percentages of revolvers registered in 2005, with nearly 10 percent of their lobbying corps having served in the legislature. Texas and Florida had roughly 4 percent and 3 percent that year, and Virginia had one of the lowest percentages — fewer than 1 percent — of ex-legislators on their list of registered lobbyists.

States with the fewest number of ex-lawmakers acting as lobbyists tend to have small populations, such as Alaska (10), Hawaii and Wyoming (12 each). But Virginia, which according to July 2005 U.S. census estimates was the 12th-most-populous state, ranked last in the study with only six former legislators registered to lobby in 2005.

"No term limits and entrenched incumbency means little turnover in the legislature," explained Lisa Guthrie, executive director of the Virginia League of Conservation Voters, "and legislators who stay so long that when they get out, they are too old to start a new career as a lobbyist."

Since most state legislatures are part-time, lawmakers-turned-lobbyists across the country spend much of their time focusing their efforts and expertise on activities away from the statehouse. In Texas, for example, lobbyists work the statehouse halls only during a five-month session every odd-numbered year. But they still keep busy in the off-session.

"Even-numbered years are election years. ... [Lobbyists] are going to the fundraisers and helping the candidates in their campaigns," explained Andrew Wheat, research director of the state watchdog group Texans for Public Justice. "They are probably lobbying other state agencies [and officials], like the governor. When it is an odd year and the Legislature is in session, the lobbying peaks."

In some cases, former part-time legislators also choose to limit their lobbying to part-time, working the capitol only during the session and spending the rest of the year doing their other line of work.

"I just work during the session and that's it," said Bob Gilbert, a former Republican member of the House in Montana. "I play carpenter the rest of the time."

Fellow Montanan Larry Fasbender, a former Democratic state representative and senator, does the same. "I'm actually a farmer, and it worked out quite well to lobby in the winter months," Fasbender said.

The pay-off for turning to lobbying is typically much higher than a legislator's earned income. In 2005, past legislators lobbying in Texas, for example, earned an average range of $256,000 to $494,000 in client fees. By comparison, a Texas legislator's 2005 salary was $7,200, plus a per diem for living expenses of $128.

While Center interviews confirmed that lobbyists make much more than lawmakers, determining how much more, in many cases, is difficult. Legislators' salary amounts are made public, while many lobbyists' are not: in 2005, 21 states did not require lobbyists' fees or salaries to be disclosed. That number dropped to 19 in 2006, after Florida and Tennessee changed their ethics laws.

Players in and out of the statehouse

Among the most powerful of former legislators-turned-lobbyists are those who held leadership roles. The lobbyists' ranks in 2005 include at least 98 ex-legislators who were House speakers, Senate presidents or presidents pro-tempore.

John Thrasher, a Republican former legislator, is one of the more recent Florida speakers to enter the business. Thrasher, who left office in 2000, registered in January 2001 to lobby the state's executive branch. Then he registered again in 2002 to lobby the Florida Legislature after the two-year "cooling-off" period required by state law had ended. He joined Southern Strategy Group — one of the biggest lobbying firms in the South — and now lobbies for numerous private clients.

Thrasher was aware his former role in government would help his new lobbying practice. "You don't get to be speaker unless some people perceived you to be of some ability. I think I came out with a pretty good feeling of how I could help people with the process," he told the Center.

Adding to their status as potential advocates, some former statehouse leaders roam the halls of buildings where statues or monuments celebrating their public service are located. For

example, a bronze bust of Texan Gib Lewis, a powerful Democratic House speaker in the 1980s and 1990s, sits in the Austin capitol where Lewis now lobbies legislators on behalf of his clients.

Another powerful lawmaker-turned-lobbyist is Stephen Wojdak, who started his firm in 1977 after leaving Pennsylvania's statehouse. As a Democratic legislator, he served as chairman of the House Appropriations Committee, "a post that allowed him to play a significant role in the shaping of the commonwealth's annual budget," according to the biography on the his firm's Web site. Since then, Wojdak has lobbied for dozens of clients, including health care providers such as the North Philadelphia Health System and the Pittsburgh Mercy Health System in the Keystone State.

But while many perceive former legislators as having an advantage when working to sway lawmakers' opinion, not all agree.

"I didn't really feel like I was treated any differently than the other lobbyists," said Diana Glomb-Rogan, a past Democratic state senator from Nevada. Glomb-Rogan said she found her friendships in the statehouse gained her little advantage as an advocate.

"I was teased by some of my colleagues a little bit when I went to testify, but all in appropriate, good fun," she said. "They certainly didn't cut me any slack when it came to tough questions, so I wasn't spared."

According to Cap Ferry, a former Utah Senate president now a lobbyist himself, many lawmakers are not cut out for the switch.

"Most legislators don't make good lobbyists," said the onetime Republican lawmaker. "They forget they're not in charge and they don't like doing grunt work. ... Most legislators don't like being told what to do."

Another type of government service

Another lucrative lobbying avenue for lawmakers is advocating for government entities, including towns, counties, state universities, and even massive state agencies. Many former legislators take jobs as legislative liaisons, public affairs consultants or government relations experts.

A 2004 Atlanta Journal-Constitution editorial pinpointed several legislators who returned as lobbyists, some working for other branches of state government. In 2005, 13 of Georgia's past legislators were listed as registered lobbyists working for state government agencies, six of them for the Department of Transportation.

Other than legislative liaison Jimmy Benefield, a former Democratic House Transportation Committee chairman, all of the ex-legislators registered on behalf of the Department of Transportation were or had been members of the Georgia State Transportation Board, which oversees the department's budget. Board members are elected by a majority of the General Assembly's caucus in each of the state's 13 Congressional districts.

Benefield told the Center that board members are not lobbyists, though they are registered. "They are signed up as lobbyists because if they do go over and talk to the legislature, we want to make sure they are not doing anything illegal," he said.

Not all states agree that these kinds of government positions truly qualify as lobbying jobs. The Center found that only 18 states require government-employed advocates to register as lobbyists.

Many ex-legislators told the Center that they registered to lobby out of an abundance of caution.

Amanda Merrill, a past Democratic legislator in New Hampshire, lobbied for New Hampshire Citizens Alliance in 2004. "I basically registered so that if I did do something that could be construed as lobbying, that would be covered," she said.

Bud Gardner, a former Democratic representative in Florida, offered the Center a similar explanation as to why he registered as a lobbyist in 2003 for the trade group that employed him.

"Actually, I never lobbied for the Florida Association of Broadcasters," Gardner wrote to the Center in an e-mail. "I am a tax consultant for FAB and because I was listed as a consultant in 2003, I thought I needed to register as a lobbyist. Since I do no lobbying for FAB, we [later] determined that there was no need to register as a lobbyist."

Slowing the revolving door

States differ greatly in how they regulate lobbying — from the definition of "lobbying" and "lobbyist" to the limits on lobbyists' gifts or campaign contributions to lawmakers.

By 2007, at least **19 states** (http://projects.publicintegrity.org/hiredguns/report.aspx?aid=783) will require a one-year cooling-off period before their legislators can become lobbyists. Six states already have a two-year wait and North Carolina will begin enforcing a six-month ban in 2007.

Florida is one of the states with a two-year cooling-off period for former legislators anxious to begin lobbying careers. But the ban doesn't appear to have slowed the revolving door

there, given its rank as second to Texas for the number of former lawmakers in its lobbying corps.

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As the revolving door between legislator and lobbyist continues to turn at the nation's statehouses, the concerns over the influence former lawmakers wield all come back to the same point: the common good.

"Whether you are a legislator or a lobbyist," said Kerns of the Center for Ethics in Government, "the question is how the public can best be served."

Director of State Projects Leah Rush, Database Editor Helena Bengtsson, researchers Neil Gordon, Joaquin Sapien, Susan Schaab, Elspeth Reeve as well as research interns Nadine Elsibai, Sun-Jung Kim, Jeffrey Nelson, and Jamie Schuman contributed to this report. Additional research assistance was provided by interns Lindsey Holden, Sara Hunt, David Jimenez, Sarah Laskow, Julia Miller-Lemon, Sophie Rutenbar and Joshua Starr.

HIRED GUNS

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STATEHOUSE REVOLVERS

Study finds more than 1,300 ex-legislators among 2005 state lobbying ranks

Kevin Bogardus

Over a three-year period ending in 2005, nearly 1,600 former lawmakers across the country were registered at some point to lobby state legislatures for special interests, according to an analysis by the Center for Public Integrity. More than **1,300 ex-lawmakers**

Changing Sides
(https://publicintegrity.org/2011/08/19/5899/ch
sides)

Many legislators, after leaving office, take jobs lobbying on the same issues that they debated as lawmakers. Here are some examples:

As an Oregon Republican state legislator, Paul Phillips was fined a record $17,000 for, among other charges, hinting that he would help his then-consulting client, Nike, on upcoming tax legislation, according to a state hearing officer. Phillips went on to lobby for the shoe giant along with many other clients at PacWest, his own lobby shop.

As a Republican state senator from Nebraska, Loran Schmit got his first bill promoting the alternative fuel ethanol enacted in 1971. A year after being defeated in his re-election campaign in 1992, Schmit returned to the statehouse as a lobbyist and represents several ethanol interests at his own firm, Schmit Industries, today.

Once the chairman of Missouri's Joint Committee on Gaming and Wagering, former Democratic Rep. Chris Liese now lobbies for several gambling industry interests. State law forbids lawmakers to be employed by a casino until two years after they leave office. So to lobby for Isle of Capri Casinos, he got clearance from the Missouri Ethics Commission, the Missouri Gaming Commission, and

from his own lawyer, according to TheKansas City Star. Gaming officials ruled that lobbying under contract was not covered by the ban.

Jaime Capelo co-authored legislation that capped medical liability rewards in 2003 as a Democrat in the Texas House of Representatives. Three years later, he now lobbies for several clients that benefited from his landmark bill: trade groups associated with the health care industry. One client, the Texas Alliance for Patient Access, prominently lists Capelo on its Web site as a member of its "Lobby Team," along with two other former legislators.

Terry Wanzek served as a Republican in the North Dakota legislature for a decade and chaired the Senate Agriculture Committee before exiting the statehouse after 2002. Starting that year, he put his skills to use as a board member of the North Dakota Grain Growers Association. He registered as a lobbyist when he served a year as the organization's president through January 2006. "I am a self-employed farmer," said Wanzek, who is running for his old Senate seat again. "It was just like a teacher being president of the teachers union."

John Foran helped create San Francisco's Metropolitan Transportation Commission and provide $300 million in transportation funds to localities during more than two decades of combined service as a California Democratic representative and senator. In 2005, the lobbying clients of Foran and his firm included a variety of city transportation authorities — including the MTC.

It's all relative
(https://publicintegrity.org/2006/12/20/5897/its-all-relative)

By **Elspeth Reeve**
(https://publicintegrity.org/authors/elspeth-reeve)
December 20, 2006

From lobbyist to legislator
(https://publicintegrity.org/2006/10/16/5901/lobbyist-legislator)

By **Nadine Elsibai**
(https://publicintegrity.org/authors/nadine-elsibai)
October 16, 2006

(http://projects.publicintegrity.org/hiredguns/reg.aspx) were registered to lobby in 2005 alone.

The study findings show that the revolving door between public and private service turns just as easily in the state arena as it does in Washington D.C. on the federal level. And when the former state legislators moved into their new roles, Center research found, they often emerged as some of the most powerful, well-connected statehouse lobbyists.

"They sell that they have unique access because they're a former legislator," said Blair Horner, the legislative director for the New York Public Interest Research Group, a state government watchdog organization.

As lobbyists, they work to further the interests of companies and organizations as diverse as the 162,000 state bills introduced nationwide last year. Their clients run the gamut of special interests: from private companies to public schools, from trade associations to labor unions, from political watchdogs to political parties.Ex-legislators often start boutique shops or join established blue-chip firms as a name partner. Among those registered to lobby in 2005, more than 200 signed up under a lobbying firm or consulting group that included their name in the title. Others were hired by companies on a contract basis or became staff members of companies and associations looking for a voice at the statehouse.

Legislators become lobbyists because "they have skills and expertise to do so," said Peggy Kerns, director of the Center for Ethics in Government at the National Conference of State Legislatures. "They are effective. They become experts on certain issues."

In many states, the job of a legislator draws low pay despite long hours. For their elected officials, the inclination to enter the influence business can be particularly strong.

"I can stay in the state Senate, which I've been in for 16 years, attend meetings at night and weekends, and stand for re-election at $25,000 a year with per diem, or I can go out in the hall and not have to go to meetings at night, only follow the legislation that my clients care about, and make $200,000 a year," said former Indiana Democratic legislator Louis Mahern, who is currently a registered lobbyist. "You can only resist that for so long. I have to start thinking about my financial future or my children's education."

The Center's analysis included a six-month-long, state-by-state survey that compared the names of former legislators with the names of lobbyists registered in 2003, 2004 and 2005. The initial identification matches were confirmed and supplemented through hundreds of telephone calls to officials and political observers in all 50 states to ensure that the former legislators and the current lobbyists were the same people. The Center also attempted to contact each individual to obtain direct confirmation.

Center research found that former **government staffers** (http://projects.publicintegrity.org/hiredguns/report.aspx?aid=769) across the country have gone on to become well-connected lobbyists. Although much rarer, researchers also discovered that some lobbyists have abandoned their roles as advocates to the legislature

to become **elected members** (http://projects.publicintegrity.org/hiredguns/report.aspx?aid=761) .The lists of ex-legislators registered to lobby accompanying this report focus on those registered in 2005. Center researchers attempted to identify as many legislators-turned-lobbyists as were registered in each state despite the wide variation among state laws defining what practices require registration. Many lobbyists revolved from the legislature in recent years; others had not held office for decades.

Everything's bigger in Texas

The Center's study of 2005 records found the most legislators-turned-lobbyists in Texas: 70 ex-lawmakers were registered that year. Florida was second with 60 "revolvers," and Minnesota and Illinois ranked next with 50 each. Following in the list were Missouri (46), Massachusetts and Michigan (43 each) and Georgia (41).

Proportionately, New Hampshire, Utah and Oklahoma had the highest percentages of revolvers registered in 2005, with nearly 10 percent of their lobbying corps having served in the legislature. Texas and Florida had roughly 4 percent and 3 percent that year, and Virginia had one of the lowest percentages — fewer than 1 percent — of ex-legislators on their list of registered lobbyists.

States with the fewest number of ex-lawmakers acting as lobbyists tend to have small populations, such as Alaska (10), Hawaii and Wyoming (12 each). But Virginia, which according to July 2005 U.S. census estimates was the 12th-most-populous state, ranked last in the study with only six former legislators registered to lobby in 2005.

"No term limits and entrenched incumbency means little turnover in the legislature," explained Lisa Guthrie, executive director of the Virginia League of Conservation Voters, "and legislators who stay so long that when they get out, they are too old to start a new career as a lobbyist."

Since most state legislatures are part-time, lawmakers-turned-lobbyists across the country spend much of their time focusing their efforts and expertise on activities away from the statehouse. In Texas, for example, lobbyists work the statehouse halls only during a five-month session every odd-numbered year. But they still keep busy in the off-session.

"Even-numbered years are election years. ... [Lobbyists] are going to the fundraisers and helping the candidates in their campaigns," explained Andrew Wheat, research director of the state watchdog group Texans for Public Justice. "They are probably lobbying other state agencies [and officials], like the governor. When it is an odd year and the Legislature is in session, the lobbying peaks."

In some cases, former part-time legislators also choose to limit their lobbying to part-time, working the capitol only during the session and spending the rest of the year doing their other line of work.

"I just work during the session and that's it," said Bob Gilbert, a former Republican member of the House in Montana. "I play carpenter the rest of the time."

Fellow Montanan Larry Fasbender, a former Democratic state representative and senator, does the same. "I'm actually a farmer, and it worked out quite well to lobby in the winter months," Fasbender said.

The pay-off for turning to lobbying is typically much higher than a legislator's earned income. In 2005, past legislators lobbying in Texas, for example, earned an average range of $256,000 to $494,000 in client fees. By comparison, a Texas legislator's 2005 salary was $7,200, plus a per diem for living expenses of $128.

While Center interviews confirmed that lobbyists make much more than lawmakers, determining how much more, in many cases, is difficult. Legislators' salary amounts are made public, while many lobbyists' are not: in 2005, 21 states did not require lobbyists' fees or salaries to be disclosed. That number dropped to 19 in 2006, after Florida and Tennessee changed their ethics laws.

Players in and out of the statehouse

Among the most powerful of former legislators-turned-lobbyists are those who held leadership roles. The lobbyists' ranks in 2005 include at least 98 ex-legislators who were House speakers, Senate presidents or presidents pro-tempore.

John Thrasher, a Republican former legislator, is one of the more recent Florida speakers to enter the business. Thrasher, who left office in 2000, registered in January 2001 to lobby the state's executive branch. Then he registered again in 2002 to lobby the Florida Legislature after the two-year "cooling-off" period required by state law had ended. He joined Southern Strategy Group — one of the biggest lobbying firms in the South — and now lobbies for numerous private clients.

Thrasher was aware his former role in government would help his new lobbying practice. "You don't get to be speaker unless some people perceived you to be of some ability. I think I came out with a pretty good feeling of how I could help people with the process," he told the Center.

Adding to their status as potential advocates, some former statehouse leaders roam the halls of buildings where statues or monuments celebrating their public service are located. For

example, a bronze bust of Texan Gib Lewis, a powerful Democratic House speaker in the 1980s and 1990s, sits in the Austin capitol where Lewis now lobbies legislators on behalf of his clients.

Another powerful lawmaker-turned-lobbyist is Stephen Wojdak, who started his firm in 1977 after leaving Pennsylvania's statehouse. As a Democratic legislator, he served as chairman of the House Appropriations Committee, "a post that allowed him to play a significant role in the shaping of the commonwealth's annual budget," according to the biography on the his firm's Web site. Since then, Wojdak has lobbied for dozens of clients, including health care providers such as the North Philadelphia Health System and the Pittsburgh Mercy Health System in the Keystone State.

But while many perceive former legislators as having an advantage when working to sway lawmakers' opinion, not all agree.

"I didn't really feel like I was treated any differently than the other lobbyists," said Diana Glomb-Rogan, a past Democratic state senator from Nevada. Glomb-Rogan said she found her friendships in the statehouse gained her little advantage as an advocate.

"I was teased by some of my colleagues a little bit when I went to testify, but all in appropriate, good fun," she said. "They certainly didn't cut me any slack when it came to tough questions, so I wasn't spared."

According to Cap Ferry, a former Utah Senate president now a lobbyist himself, many lawmakers are not cut out for the switch.

"Most legislators don't make good lobbyists," said the onetime Republican lawmaker. "They forget they're not in charge and they don't like doing grunt work. ... Most legislators don't like being told what to do."

Another type of government service

Another lucrative lobbying avenue for lawmakers is advocating for government entities, including towns, counties, state universities, and even massive state agencies. Many former legislators take jobs as legislative liaisons, public affairs consultants or government relations experts.

A 2004 Atlanta Journal-Constitution editorial pinpointed several legislators who returned as lobbyists, some working for other branches of state government. In 2005, 13 of Georgia's past legislators were listed as registered lobbyists working for state government agencies, six of them for the Department of Transportation.

Other than legislative liaison Jimmy Benefield, a former Democratic House Transportation Committee chairman, all of the ex-legislators registered on behalf of the Department of Transportation were or had been members of the Georgia State Transportation Board, which oversees the department's budget. Board members are elected by a majority of the General Assembly's caucus in each of the state's 13 Congressional districts.

Benefield told the Center that board members are not lobbyists, though they are registered. "They are signed up as lobbyists because if they do go over and talk to the legislature, we want to make sure they are not doing anything illegal," he said.

Not all states agree that these kinds of government positions truly qualify as lobbying jobs. The Center found that only 18 states require government-employed advocates to register as lobbyists.

Many ex-legislators told the Center that they registered to lobby out of an abundance of caution.

Amanda Merrill, a past Democratic legislator in New Hampshire, lobbied for New Hampshire Citizens Alliance in 2004. "I basically registered so that if I did do something that could be construed as lobbying, that would be covered," she said.

Bud Gardner, a former Democratic representative in Florida, offered the Center a similar explanation as to why he registered as a lobbyist in 2003 for the trade group that employed him.

"Actually, I never lobbied for the Florida Association of Broadcasters," Gardner wrote to the Center in an e-mail. "I am a tax consultant for FAB and because I was listed as a consultant in 2003, I thought I needed to register as a lobbyist. Since I do no lobbying for FAB, we [later] determined that there was no need to register as a lobbyist."

Slowing the revolving door

States differ greatly in how they regulate lobbying — from the definition of "lobbying" and "lobbyist" to the limits on lobbyists' gifts or campaign contributions to lawmakers.

By 2007, at least **19 states** (http://projects.publicintegrity.org/hiredguns/report.aspx?aid=783) will require a one-year cooling-off period before their legislators can become lobbyists. Six states already have a two-year wait and North Carolina will begin enforcing a six-month ban in 2007.

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there, given its rank as second to Texas for the number of former lawmakers in its lobbying corps.

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After Prison, Many Oklahomans Are Banned from Voting for Years

by **Ben Botkin < https://oklahomawatch.org/author/benbotkin/>**
June 18, 2018

Appendix 13

Robin Wertz, of Exodus House in Oklahoma City, which helps people released from prison gain a footing as they re-enter society, has been out of prison for 11 years. But she still in prohibited from voting, and won't be able to cast a ballot until 2024. Credit: Ilea Shutler / Oklahoma Watch

For Robin Wertz, the wait will be long before she can cast a ballot at an Oklahoma polling place.

Wertz, who runs a nonprofit center in Oklahoma City that helps people transition from prison back into society, is prohibited from voting in any election until 2024. That's in spite of the fact that she has been out of prison for 11 years, works full-time, has never re-offended and can travel abroad with no restrictions.

"I've never even received a traffic ticket," Wertz said of her time since leaving prison. "It's like I'm still being punished."

Wertz, 54, is among the tens of thousands of Oklahomans who have been convicted of felonies but are unable to vote until their sentences have been completed, including completion of probation or parole. Just as Oklahoma's incarceration rate is projected to rise in coming years unless more reforms are enacted, the state also, by extension, could see a growing number of citizens banned from its voting booths.

As of last week, the Oklahoma Department of Corrections counted < http://doc.ok.gov/Websites/doc/images/Documents/Population/Count%20Sheet/2018/DOC%20OMS%20Count%20-%20June%2011,%202018.pdf> 27,131 incarcerated inmates and another 34,257 under community supervision, including probation and parole. Another 1,164 offenders were awaiting transfer to prison from jails. That brings the total number of people barred from voting because of felonies to more than 62,500.

The total is higher than the 58,302 estimated for the state in a national 2016 study < https://www.sentencingproject.org/publications/6-million-lost-voters-state-level-estimates-felony-disenfranchisement-2016/#III.%20Recent%20Changes> of "felony disenfranchisement" by The Sentencing Project, a nonprofit that researches disparities in the criminal justice system. Oklahoma's number represented nearly 2 percent of the state's overall voting-age population. The organization estimated that 6.1 million people nationwide cannot vote in their state because of felony convictions – a figure that nearly doubled over the past two decades. Oklahoma's rate was slightly below the national average, the study found.

A New Life, With No Vote

Wertz's journey to prison and out stretches from Oklahoma to California.

Born and raised in Shawnee, she eventually moved to California with her then-husband. Drinking on weekends eventually turned into a cocaine habit. When they fell behind on property taxes on their home, she said she turned to selling dope. While in Norman, she decided to sell drugs and got caught.

After serving several months in a California jail on a minor drug charge, she was extradited back to Oklahoma to face the Cleveland County drug trafficking case. Her sentence in 2004 was a full 20 years: eight years of prison and 12 years of probation. She was paroled in 2007 and will be on unsupervised probation until 2024.

When she got out, Wertz began working at a restaurant and became a resident at Exodus House, which is part of Criminal Justice & Mercy Ministries. Two years later she went to work for Exodus House, ultimately becoming site director.

Wertz is a devout Christian and has steadily rebuilt a normal life. She works with former inmates who are trying to turn their lives around.

She isn't required to check in with a probation officer. She has a passport and has traveled to Caribbean countries on vacation. No permission was needed.

Wertz said people who have a served time and been through the system deserve to be heard. The system unfairly takes away their right to vote, she said.

"It's a way to keep them from having a voice," Wertz said.

A Range of State Laws

States are allowed to set their own laws for voting, including if and when people who commit felonies are eligible to vote. Those laws apply to local, state and federal elections.

The result is a patchwork of laws that give varying degrees of freedom to people who have served time in the criminal justice system, The Sentencing Project study shows.

Oklahoma is essentially in the middle of the pack. A couple of states, Maine and Vermont, don't have any restrictions on voting; in Vermont, < https://www.nbcnews.com/politics/politics-news/states-rethink-prisoner-voting-rights-incarceration-rates-rise-n850406> for instance, inmates are notified 90 days before an election, receive voter guides and can vote by absentee ballot.

Oklahoma is among 18 states, including Arkansas and Texas, that restrict voting during prison, probation and parole. To enforce the law, the state requires court clerks in each county to send a monthly list of people convicted of felonies to the county election board. County election officials must cancel the registrations of those convicted and forward the information of non-residents to

the State Election Board to be cancelled for their county of residence.

A dozen other states have a system that restricts voting after the sentence ends, either permanently or for a designated period of time. Another 14 states restrict voting only during the time spent in prison. Four states restrict voting during prison and parole.

Oklahoma's law applies to felons who are still in jail, awaiting transfer to prison. Other jail inmates, in for misdemeanors or awaiting trial, can request absentee ballots by phone, mail or through jail officials.

A Restoration Trend

In at least a few states, efforts have arisen in recent years to restore voting rights to people with felony convictions.

"The issue has animated ... conversation nationally and within states, and there have been active efforts to expand the (franchising of felony offenders) around the country," said Nicole D. Porter, director of advocacy for The Sentencing Project.

Maryland, for example, ended its lifetime ban on voting for felons in 2007; then, in 2016, the state began allowing people on probation and parole to vote.

In Florida, voters will decide < https://www.palmbeachpost.com/news/state--regional-govt--politics/amendment-restore-felons-voting-rights-florida-november-ballot

/uXOxe9lET9RE5piKMzZqqK/> in November on a referendum that would automatically restore the voting rights of felons after they complete their sentence, with the exception of murderers and sex offenders. The state requires people with felony records to wait five to 10 years and go through an application process to get their rights restored.

Inmate advocacy groups say it's unjust to take away a convicted felon's ability to vote because voting is an inherent right and part of living in a democratic society.

"Just because you're convicted of a felony doesn't mean you should lose your basic rights in the democratic process," said Brady Henderson, legal director of the American Civil Liberties Union of Oklahoma. "Our position is that this shouldn't disqualify someone from being a full citizen, from participating in our democracy."

Henderson said Oklahoma's system of prohibiting voting by people on probation and parole means they are often denied that right for years, even after they've successfully established new lives.

"They're living normal lives and very importantly, they are doing things like paying taxes," he said.

Elected officials who support suspension or elimination of voting rights have said those with felony convictions should not be allowed immediately to influence the very laws that they have broken.

In Oklahoma, the conversation about easing voting restrictions has been more muted. In the last legislative session, state Rep. Regina Goodwin, D-Tulsa, filed a bill intended to clarify, but not change, how Oklahoma's current system works.

Current law states that a person with a felony conviction "shall be ineligible to register for a period of time equal to the time prescribed in the judgment and sentence."

Goodwin's bill would clarify that that a person is eligible to vote after completing all of their court-ordered prison time, probation and parole. Goodwin, who could not be reached for comment, has also requested an interim study on the topic.

Reach reporter Ben Botkin at bbotkin@oklahomawatch.org or (702) 418-6089.

State Voting Restrictions for Felons

All but two states impose some restriction on voting for people convicted of felonies, although the severity of the restrictions varies, a 2016 study by The Sentencing Project found. In Arizona, for example, a lifetime ban applies to those convicted of two or more felonies; in other states, all it takes is one. In California, voting rights are accorded to felons who are housed in a jail but not a prison. In some other states, the nature of the crime determines whether a person's voting rights can be restored. Over the past decade, many states have taken steps to ease voting restrictions on people with felony convictions.

No Restriction
Maine
Vermont

Prison Only
Hawaii
Illinois
Indiana
Massachusetts
Maryland
Michigan
Montana
New Hampshire
North Dakota
Ohio
Oregon
Pennsylvania
Rhode Island
Utah

Prison, Parole
California
Colorado
Connecticut
New York

Prison, Parole, Probation
Alaska
Arkansas
Georgia
Idaho

Kansas
Louisiana
Minnesota
Missouri
New Jersey
New Mexico
North Carolina
Oklahoma
South Carolina
South Dakota
Texas
Washington
West Virginia
Wisconsin

Prison, Parole, Probation, Post-Sentence
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Florida
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Kentucky
Mississippi
Nebraska
Nevada
Tennessee
Virginia
Wyoming