

Testimony by Trevor P. Martin
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When legislators rely on the Census Bureau's prison counts to draw legislative districts, they unintentionally give extra representation to the districts that contain prisons and dilute the votes of everyone else. It's called "prison gerrymandering."

It plays out in Ohio on two levels:

- Ohio engages in prison gerrymandering for state legislative districts.
- At least three Ohio cities provide some of the most dramatic instances of prison gerrymandering in the nation. Prison gerrymandering violates the constitutional principle of "one person, one vote." The Supreme Court requires districts to be based on equal population in order to give each resident the same access to government. But a longstanding flaw in the Census counts incarcerated people as residents of the prison location, even though they cannot vote and are not a part of the surrounding community. Ohio law considers incarcerated people to be residents of their home address; a person resides "where he has his true, fixed, permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning. ... It is not, however, necessary, that he should intend to remain there for all time. If he lives in a place, with the intention of remaining for an indefinite period of time, as a place of fixed present domicile, and not as a place of temporary establishment, or for mere transient objects, it is to all intents, and for all purposes, his residence..." (Wickham v. Coyer, 20 Ohio C.D. 765 (1900) (citations omitted).) Using the Census Bureau's prison count data for redistricting purposes is inconsistent with Ohio's residence law.

Impact at the state level:

- After redistricting in 2011, each House District in Ohio is supposed to have about the same number of people, but some districts were credited with as many as 9,000 incarcerated people from other parts of the state. This gives voters in those districts extra influence and dilutes the weight of votes cast in districts that weren't padded with prison populations. For example, District 92 (Fayette, Ross, and Pickaway Counties), containing the Pickaway Correctional Institution and Correctional Reception Center, Ross Correctional Institution, and the Chillicothe Correctional Institution was credited with 9,045 incarcerated people and District 86 (Union and Madison Counties), containing the Ohio Reformatory for Women, North Central Correctional Institution, and the Marion Correctional Institution was padded with 7,189 incarcerated people. Crediting all of Ohio's incarcerated people to a few districts enhances the political clout of the people who live near prisons, while diluting the voting power of everyone else.

Impact at the municipal level:

Ohio provides many dramatic examples of local governments engaging in prison gerrymandering during the 2011 redistricting cycle:

- 74% of a ward in the city of Marion is incarcerated, giving the residents of this ward four times the voting power of other city residents.

- 50% of Ward 5 in the city of Mansfield is incarcerated at the Richland and Mansfield Correctional Institutions. This means that every resident of Ward 5 has twice the voting power of a resident of any other ward. At-Large Councilman Doug Versaw explained why this was a bad idea: “They [the prisoners] are not citizens of Mansfield. They cannot vote. They have nothing to do with city council at all, in that we don’t represent them,” he said. ‘All of the wards in the City of Mansfield now have 8,000 people (with potential voting rights) — except for Ward 5, which has 3,000. To me, that gives those people in Ward 5 ‘super representation,’ which I don’t think is fair.’”¹

- 47% of a ward in the city of Marysville is incarcerated

- The city of Lima avoided prison gerrymandering by excluding the Allen and Oakwood Correctional Institutions when drawing its districts. If the incarcerated population had been included in redistricting data, it would have accounted for about half of a ward’s population. Last decade, Allen County Board of Elections Director Keith Cunningham explained the rationale for Lima’s decision to exclude the prison populations when drawing the districts: “prisoners have no communications, no voting rights, and are not a constituency.”² As a result, each ward is equally represented and has the same political power, regardless of whether it contains a prison.

Strategy choices:

- Pass a bill that would count incarcerated people at home for state legislative, county, and municipal redistricting purposes. For example, the states of Maryland and New York passed legislation, and both successfully adjusted their redistricting data after the 2010 Census, and California and Delaware have similar laws that will be implemented following the 2020 Census.

- Pass legislation to require municipalities to avoid prison gerrymandering. For example, Colorado and Michigan have statutes that specifically require local governments to exclude prison populations when redistricting.