



128 Dorrance Street, Suite 400  
Providence, RI 02903  
Phone: (401) 831-7171  
Fax: (401) 831-7175  
[www.riaclu.org](http://www.riaclu.org)  
[info@riaclu.org](mailto:info@riaclu.org)

## ACLU OF RI POSITION: AMEND

### TESTIMONY ON 21-H 6222 and 21-H 5868, ESTABLISHING A REAPPORTIONMENT COMMISSION April 12, 2021

The right to vote is the quintessential right underlying the democratic process. As a result, the ACLU of Rhode Island has had a long interest in ensuring that decennial redistricting respects and studiously conforms to the core premise of the Fourteenth Amendment's equal protection clause, and that clause's counterpart in Rhode Island's Constitution. Because that right can be infringed by the dilution, as well as the denial, of the right to vote, malapportioned districts or any failure by the state to provide appropriate voting strength to racial minorities raise fundamental civil liberties concerns.

In that regard, there are a few topics in particular that are of special concern to us in establishing a reapportionment commission for the upcoming redrawing of voting districts.

1. **Protection for Racial Minorities**. The first issue, and one we have raised during previous reapportionments, involves the state's obligation to provide a voice to Rhode Island's racial minorities through the redistricting process. We participated as a "friend of the court" in *Metts v. Almond*, the successful Voting Rights Act lawsuit that took place after the 2000 redistricting and that required a change in Senate district lines in Providence. For the redistricting that took place ten years later, the ACLU and other public interest groups raised concerns about the lack of

transparency by the Commission in withholding racial demographic data being used to draw district lines.

It is critical that Commission be particularly sensitive to ensuring that legislative district lines are drawn with special attentiveness to giving residents of color – both Latino and African-American – appropriate and fair representation in our General Assembly. There should be a transparent process that ensures there will be no basis whatsoever for any claims of unfair line-drawing that has the effect of diluting the minority vote. We therefore strongly urge that H-6222 be amended to include language along the lines of that contained in H-5868:

Districts shall provide racial and language minorities with equal opportunity to participate in the political process and shall not dilute or diminish their ability to elect candidates of choice, whether alone or in coalition with others.

2. **Open Records**. Regarding the lack of transparency that marred the last redrawing of district lines in Rhode Island, we also support inclusion of a provision from H-5868 relating to public records. While H-6222 confirms that the Commission will be subject to the Access to Public Records Act, the difficulties encountered last time in reviewing documents used by the staff and consultants in drawing lines undermined public confidence in the redistricting process. We therefore support inclusion of a provision contained in H-5868 providing that

no documents or communications created or received by commissioners, staff, or consultants as part of official duties shall be exempt from disclosure for any privilege other than client attorney relationship as allowed in § 38-2-2(4)(A)(1)(a).

3. **Non-Partisan Line-Drawing**. While it may be impossible to divorce reapportionment completely from politics, it is important that the effort be made. Partisan gerrymandering should be avoided to the maximum extent possible, and for that reason we support H-5868's provision that "[d]istricts shall not, when considered on a statewide basis, unduly favor or disfavor any political party."

4. **Eliminate Prison Gerrymandering.** Finally, another major issue that we urge both bills to address in establishing line-drawing standards is the elimination of prison-based gerrymandering. As committee members know from hearing testimony on a bill by Rep. Williams addressing this issue (H-5285), it is a critical one. For geographical reasons, it is especially significant in Rhode Island because it places our state far outside the mainstream when it comes to prison-related malapportionment.

Rhode Island currently gives extra representation to the people who live near the ACI. That is because past reapportionments have relied on U.S. Census data that counts people in prison as if they were all residents of Howard Avenue in Cranston. The Supreme Court's "one person-one vote" rule requires legislative districts to be redrawn each decade so that each district contains the same population and each resident is therefore given the same access to government. But this process fails when an underlying premise, such as the one involving the residency status of Rhode Island's prison population, is faulty. The impact is that the voting strength of the communities from which the inmates come is diluted, while the political influence of the city residents in which the prison is located is inflated.

The allocation of all prisoners to Cranston for redistricting purposes is particularly problematic and flawed because that premise is in direct conflict with state voting law, R.I.G.L. §17-1-3.1, which explicitly provides that incarceration does not change a person's residence:

"A person's residence for voting purposes is his or her fixed and established domicile... A person can have only one domicile, and the domicile shall not be considered lost solely by reason of absence for any of the following reasons: ... Confinement in a correctional facility...."

Thus, even though inmates at the ACI are counted as residents of Cranston for redistricting purposes, they are statutorily denied the right to vote from there even if they want to.<sup>1</sup> This

---

<sup>1</sup> Under the Rhode Island Constitution, all persons being held on misdemeanor offenses or awaiting trial for any offense are entitled to vote. Over 2,000 ACI inmates fall into this category.

inconsistency is unconscionable. Instead, Rhode Island should follow the example of the ten other states – including New York, Maryland, Delaware, Virginia, Colorado, and Nevada – that have ended prison gerrymandering.

The need for remedying this problem in Rhode Island is heightened by our state’s special status: having just one prison complex and state legislative districts that are smaller by population than in most states. Rhode Island thus provides one of the most dramatic examples of how prison populations distort representation.

The ACLU therefore strongly supports an amendment to the sections of H-6222 and to H-5868 setting out reapportionment standards for the Commission to follow, that would require the use of adjusted census data that would eliminate prison gerrymandering by counting incarcerated individuals at their home address. We refer you to the written testimony of the Prison Policy Initiative for minor amendments to the bill to accomplish that goal. Their testimony also includes more detailed information about the importance of addressing this issue and the significant impact it has on voting rights in our state. In conjunction with amending the Commission bill in this respect, we urge the Committee to approve Rep. Williams’ companion legislation on the topic and help ensure that Rhode Island does not continue to produce one of the most unfair and malapportioned prison-based district maps in the nation.

In conclusion, making the suggested amendments to H-6222 and/or H-5868 proposed in our testimony will promote transparency, better ensure fairness, reaffirm the principle of “one person-one vote,” and garner greater confidence from the public in the final results of the Commission’s work. We thank you in advance for your consideration of our views, and hope that our recommendations will be favorably considered.

---