



April 13, 2016

By Email

Senator Martin M. Looney
President Pro Tempore
Connecticut General Assembly
Legislative Office Bldg., Rm. 3300
Hartford, CT 06106-1591
Looney@senatedems.ct.gov

RE: Support for Senate Bill 459: An Act Concerning the Counting of Incarcerated Persons for Purposes of Determining Legislative Districts and Distributing State and Federal Funds

Dear Senator Looney:

The NAACP Legal Defense & Educational Fund, Inc. (“LDF”) submits this letter in support of Senate Bill (“SB”) 459, which, by adjusting Connecticut’s redistricting data to count incarcerated people at their home address for redistricting purposes, will end prison-based gerrymandering and bring Connecticut’s redistricting process in line with basic principles of democracy.¹ SB 459 has been assigned Senate Calendar number 360.

¹ Since its founding in 1940, LDF has been a leader in the effort to secure, protect, and advance voting rights for African-American people. To that end, LDF has advocated in the (1) courts, (2) various state legislatures like Maryland, New York, California, Kentucky, Rhode Island, Illinois, and Massachusetts, and (3) communities, to end prison-based gerrymandering.

LDF submitted an amicus brief in support of Maryland legislation, House Bill (“HB”) 496, “No Representation Without Population Act of 2010,” which counts incarcerated people as residents of their last legal home address, rather than of their prison facility address, for redistricting purposes. Brief of the Howard University School of Law Civil Rights Clinic, *et al.*, *Fletcher v. Lamone*, 831 F. Supp. 2d 887 (D. Md. 2011), available at http://www.naacpldf.org/files/case_issue/LDF%20Fletcher%20Amicus%20%28Maryland%2C%20RPH%29.pdf. The U.S. Supreme Court affirmed the constitutionality of that legislation. *Fletcher v. Lamone*, 133 S. Ct. 29 (2012); see also Decision/Order, Index No. 2310-2011, *Little v. Latfor* (N.Y. Sup. Ct. Aug. 4, 2011), available at <http://www.naacpldf.org/document/order-granting-intervention> (granting motion to intervene of LDF, and other civil rights and pro-democracy organizations, to defend New York’s Part XX legislation to end prison-based gerrymandering; that legislation remains law).

In Connecticut alone, LDF, since 2011, has repeatedly urged the Connecticut Legislature to end prison-based gerrymandering. *Hearing Regarding HB 6084 before the Connecticut General Assembly Joint Committee on Judiciary*, Mar. 21, 2011,



Counting incarcerated people as residents of the prison where they are incarcerated when drawing election district lines, known as “prison-based gerrymandering,” violates the bedrock “one person, one vote” principle. Under the U.S. Constitution, as the U.S. Supreme Court recently reaffirmed, election districts must contain roughly equal number of persons, such that elected officials represent the same number of constituents.² But prison-based gerrymandering—a practice currently followed in Connecticut—artificially inflates population numbers, and thus, political influence, in districts where prisons are located. As a result, people living outside of those districts suffer a dilution of their voting power. Incarcerated persons are not residents of the prison facilities where they are incarcerated and should be counted at their home addresses for redistricting purposes.

Your district, District 11, serving residents of New Haven, Hamden, and North Haven, keenly demonstrates the dilutive effect of prison-based gerrymandering. There are 2,256 people incarcerated who are from Hamden and New Haven and counted for redistricting purposes in other districts. SB 459 would ensure that this substantial population of incarcerated people are counted in your district, where they are from, for redistricting purposes, rather than in other districts.

Indeed, SB 459 calls for *all* incarcerated people in the state to be counted at their last pre-incarceration hometown address where, for legal purposes, they continue to reside, rather than at their prison facility. Connecticut’s residency law makes clear that incarceration does not change a person’s residence.³ This makes

http://www.naacpldf.org/files/case_issue/CT%20Testimony.pdf (urging the Connecticut legislature to pass legislation to end prison-based gerrymandering in the state); *Hearing Regarding HB 6679 Before the Connecticut General Assembly Joint Committee on Judiciary*, Apr. 1, 2013, <http://www.cga.ct.gov/2013/JUDdata/Tmy/2013HB-06679-R000401-Leah%20Aden%20-%20NAACP%20Legal%20Defense%20and%20Educational%20Fund-TMY.PDF> (same).

And LDF has produced public education materials urging an end to prison-based gerrymandering. *Captive Constituents: Prison-Based Gerrymandering and the Distortion of Our Democracy*, available at <http://www.naacpldf.org/document/captive-constituents-prison-based-gerrymandering-and-distortion-our-democracy>

² *Evenwel v. Abbott*, No. 14-940, 2016 WL 1278477 (S. Ct. Apr. 4, 2016).

³ Conn. Gen. Stat. §9-14 (1982): “Electors residing in state institutions. No person shall be deemed to have lost his residence in any town by reason of his absence therefrom in any institution maintained by the state. No person who resides in any institution maintained by the state shall be



sense. It is at their home address that incarcerated people maintain ties to the outside world through their families and other relationships. At the end of their sentences, incarcerated people return to those communities. The average length of incarceration is less than three years, but redistricting remains in effect for a decade. In Connecticut, incarcerated persons are disfranchised while incarcerated, and, thus, cannot vote as residents of the places where they are confined.⁴

Given that incarcerated individuals remain legal residents at their home addresses, it makes little sense to treat them as “constituents” where they are incarcerated. Thus, in a case arising from Maryland, the U.S. Supreme Court has affirmed the authority of states, and the localities within them, to adjust the population data used for redistricting, and to count incarcerated individuals at their last-known home addresses.⁵ Indeed, localities within Connecticut, such as Enfield and Cheshire, have exercised this authority to adjust the population data used for local redistricting, and refuse to count individuals incarcerated in facilities located within their borders as if they were town residents.⁶ Connecticut, therefore, has the opportunity to join other leading states, including Delaware, New York, Maryland, and California, and certain localities within Connecticut itself, in embracing the more democratic redistricting principle of counting incarcerated people in their home communities for redistricting purposes.⁷

admitted as an elector in the town in which such institution is located, unless he proves to the satisfaction of the admitting official that he is a bona fide resident of such institution.”

⁴ See Peter Wagner & Christian de Ocejo, Prison Policy Initiative, *Importing Constituents: Incarcerated People and Political Clout in Connecticut* (Mar. 25, 2010), available at <http://www.prisonersofthecensus.org/ct/report.html>.

⁵ See *supra* n.1.

⁶ There is no law or constitutional requirement that states must rely exclusively on Census data during redistricting. Accordingly, the towns of Enfield and Cheshire have rejected the Census Bureau’s prison counts because they would have distorted their local government districts. See list of Local Governments that Avoid Prison-Based Gerrymandering, <http://www.prisonersofthecensus.org/local/> (last updated July 20, 2015).

⁷ See *supra* n.1. (discussing Maryland and New York’s legislation); see also Del. Code Ann. Tit. 29, § 804(A) (2010) (codifying HB 384: The Act provides that the General Assembly may not count as part of the population in a given district boundary any incarcerated individual who was not a resident of the State prior to the individual’s incarceration. In addition, the Act requires that an individual who was a resident of the State of Delaware prior to incarceration be counted at the individual’s last known residence prior to incarceration, as opposed to at the address of the correctional facility.); Cal. Elec. Code § 21003 (West 2013) (codifying Assembly Bill 420: “...the Legislature hereby requests the Citizens Redistricting Commission to deem each incarcerated person



The impact of prison-based gerrymandering on communities of color in Connecticut also warrants a legislative solution through enactment of SB 469. The loss in voting power, as a consequence of prison-based gerrymandering, is felt most strongly in communities of color. Though African-American and Latino people comprise approximately 19 percent of Connecticut's population, they are 72 percent of the state's incarcerated people.⁸ Black people living in Connecticut are incarcerated at a rate approximately 12 times higher than are white people. Latino people living in the State are incarcerated at a rate approximately 7 times higher than are white people.⁹ Prison-based gerrymandering, thus, is an issue of vital importance to your constituents and to communities of color across the State. Prison-based gerrymandering unfairly dilutes the voting strength of communities of color and undermines principles of fair representation.

For the above reasons, LDF supports SB 459 and urges you to do everything within your power to secure the necessary votes in the General Assembly to pass this important legislation. Having previously considered other legislation that would have addressed this issue, the time is now for the General Assembly to ensure that incarcerated populations are not counted in a manner that unfairly dilutes the voting strength of your constituents and to do so in advance of the next redistricting cycle.

as residing at his or her last known place of residence, rather than at the institution of his or her incarceration, and to utilize the information furnished to it . . . in carrying out its redistricting responsibilities.”)

⁸ See Prison Policy Initiative, *Ending Prison-based Gerrymandering Would Aid the African-American and Latino Vote in Connecticut* (Nov. 17, 2010) available at http://www.prisonersofthecensus.org/factsheets/ct/CT_AfricanAmericans_Latinos.pdf.

⁹ See Sentencing Project, *Connecticut*, available at <http://www.sentencingproject.org/map/statedata.cfm?abbrev=CT&mapdata=true> (noting white incarceration rate of 211 per 100,000 people, as compared to 2,532 incarcerated African American persons per 100,000, and 1,401 incarcerated Latinos per 100,000 people) (last visited Apr. 11, 2016).

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Thank you for considering this request. If you have any questions or concerns, please do not hesitate to contact Leah Aden at 212.965.7715 or laden@naacpldf.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Leah Aden", written in a cursive style.

Leah C. Aden
Assistant Counsel
NAACP Legal Defense & Educational
Fund. Inc.