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Testimony of

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Before the  
**Oregon Senate Committee on Rules**  
on  
**SB331**

## **SUPPORT**

March 10, 2015

Thank you, Chairperson Rosenbaum and members of the Committee for providing the opportunity to submit testimony in support of Senate Bill 331.

I am an attorney and Executive Director of the Massachusetts-based Prison Policy Initiative. For the last decade, we have been leading the national effort to urge the Census Bureau to count incarcerated people as residents of their legal home addresses. At the same time, we work closely with state and local governments to develop interim solutions to the Census Bureau's prison count to avoid the vote dilution that results from tabulating incarcerated people in the wrong location.

Before the Committee today is SB331, which would correct the harmful effects of a long-standing flaw in the decennial census for Oregon. The Census Bureau tabulates incarcerated people as residents of the wrong location. Drawing districts based on Census Bureau counts that credit incarcerated people to the census blocks that contain prisons, rather than the census blocks that contain their homes, results in a significant enhancement of the weight of a vote cast in districts with prisons, while diluting the votes cast by all other residents in all other districts in the state.

By passing SB331, Oregon would ensure that the *vast majority* of Oregonians do not, relative to those who live near large prisons, have their votes diluted. By passing this bill, Oregon will join the national trend towards solving this problem by counting incarcerated people at home for redistricting purposes.

## **The problem**

This practice of counting incarcerated people as residents of the prison location distorts political power in Oregon in violation of both the federal constitutional principle of “one person one vote” and the state constitutional definition of residence.

The Supreme Court requires that states update their districts once per decade, ensuring that each district contains the same number of people and each resident has equal representation in state government. But the Census Bureau counts incarcerated people where they are imprisoned, not where they legally live. When prisoners — who aren’t allowed to vote and remain legal residents of their home communities — are included in the redistricting population counts for the prison’s location, the political clout of every person who doesn’t live in a district with a large prison is diluted.

For example, the Eastern Oregon Correctional Institution located in Umatilla County accounts for 28 percent of a Pendleton city council ward, giving every 3 residents of the ward with the prison the political power of 4 residents in other parts of the city. A similar, although smaller, effect is also seen among state legislative districts.

Incarcerated people come from all over Oregon but they are counted by the Census Bureau as if they were residents of 18 Census blocks that contain prisons. Relying on this federal data to draw districts directly contradicts the state constitution’s definition of residence in Article IV §4:

“For the purpose of voting, no person shall be deemed to have gained, or lost a residence ... while confined in any public prison.”

## **The solution**

By passing SB331, Oregon will follow New York, Maryland, Delaware and California<sup>1</sup> in drawing fair districts that tabulate incarcerated people at home for redistricting purposes.<sup>2</sup> A total of eight states, and more than 200 counties and municipalities, listed in the Appendix, have enacted legislation to eliminate or reduce the effects of the Census Bureau’s prison miscount.

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<sup>1</sup> The laws of both states ending prison gerrymandering were upheld in the courts. New York’s law was upheld in state court (*Little v New York State Task Force on Demographic Research and Reapportionment* No. 2310-2011 slip op. (NY Sup Ct. Dec. 1, 2011)) and Maryland’s law was affirmed by the U.S. Supreme Court *Fletcher v. Lamone*, \_\_ U.S. \_\_, 2012 WL 1030482 (June 25, 2012) affirming No. RWT-11cv3220 slip op. (D. Md. Dec. 23, 2011). The decisions and documents from both cases are archived at <http://www.prisonersofthecensus.org/fletcher/> and <http://www.prisonersofthecensus.org/little/>.

<sup>2</sup> In addition, Massachusetts, where a restrictive state constitutional clause prohibits that state from passing similar legislation, instead passed a resolution in August 2014 calling for the Census Bureau to count incarcerated people at home nationwide. A number of other states have legislation similar to SB331 pending, and on March 4, the Rhode Island Senate unanimously passed its version of this legislation, S 0239.

Maryland and New York both passed their laws after census day 2010 but with just enough time to implement the laws before the current round of redistricting. The experience of these two states, working under tight deadline pressure to successfully address the Census Bureau's prison miscount, provides powerful evidence that the adjustments proposed by SB331 can be accomplished in time for the 2021 redistricting. By passing SB311 in this legislative session, the legislature would allow ample planning time to ensure smooth and effective implementation in the next redistricting cycle.

## **Conclusion**

I urge you to pass SB331 as a permanent state-based solution to the conflict between the Census Bureau's prison miscount and the definition of residence in the Oregon state constitution.

Please do not hesitate to contact me if I can answer any questions or help provide you with additional resources on the successful implementation of the comparable laws in Maryland and New York.<sup>3</sup>

I thank you for the opportunity to present this testimony.



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<sup>3</sup> Also helpful on this topic is Erika Wood, Implementing Reform: How Maryland & New York Ended Prison Gerrymandering, *Dēmos*, August 2014 available at <http://www.demos.org/publication/implementing-reform-how-maryland-new-york-ended-prison-gerrymandering>

Appendix:

**States and local governments are taking action to end prison gerrymandering**

Last updated: April 29, 2014

California – Passed legislation to count incarcerated people at their homes of record for state legislative districting. (2011 & amended in 2012) (Cal. Elec. Code § 21003)

Colorado — Passed legislation to prohibit counties from engaging in prison gerrymandering. (2002) (Colo. Rev. Stat. §§ 30-10-306 and 30-10-306.7)

Delaware — Passed legislation to count incarcerated people at their homes of record for state legislative districting. (2010 & amended in 2011) (Del. Code Ann. Tit. 29, § 804A)

Maryland — Passed legislation to count incarcerated people at their homes of record for congressional, state legislative, county and municipal redistricting. (2010) (Md. Code Ann., Elec. Law § 8-701, Md. Code Ann., State Gov't § 2-2A-01, and Md. Code Ann., Art. 24 Political Subdivisions - Miscellaneous Provisions § 1-111)

Michigan — Passed legislation to prohibit counties and cities from engaging in prison gerrymandering. (1966) (Mich. Comp. Laws §§ 46.404(g) and 117.27a(5))

New Jersey — Passed legislation to prohibit some school boards from engaging in prison gerrymandering. (1967) (N.J. Stat. Ann. § 18A:13-8)

New York — Passed legislation to count incarcerated people at their homes of record for state legislative, county and municipal redistricting. (2010) (N.Y. Correct. Law §71(8), N.Y. Legis. Law § 83-m(13), and N.Y. Mun. Home Rule Law § 10(1)(ii)(a)(13))

Virginia — Passed legislation amending an unusual statute that required counties, cities and towns to engage in prison gerrymandering. (2001, amended in 2012 & a 2013) (Va. Code Ann, § 24.2-304.1)

In addition, more than 200 counties and municipalities across the country, without an explicit requirement from their state, are known to refuse to engage in prison gerrymandering, including:

Alabama counties: Escambia

Alabama cities: Brent, Town of Clayton, Columbiana, Wetumpka

Arizona cities: Douglas

Arkansas counties: Hot Spring, Lee, Lincoln, St. Francis

Arkansas cities: Forrest City, Malvern

California counties: Amador, Del Norte, Imperial, Kern, Kings, Lassen, Madera, Monterey, San Luis Obispo, Tuolumne.

Colorado cities: Brighton, Cañon, Centennial, Golden, Sterling  
Connecticut towns: Cheshire, Enfield  
Florida counties: Bradford, Franklin, Gulf, Lafayette, Madison, Okeechobee,  
Washington  
Georgia counties: Butts, Calhoun, Dooly, Johnson, Macon, Stewart, Tattnall,  
Telfair, Washington, Wilcox  
Georgia cities: Claxton, Glennville, Gray, McRae, Ocilla  
Illinois counties: Bond, Christian, Crawford, Fayette, Fulton, Jefferson,  
Lawrence, Lee, Livingston, Montgomery, Rock Island, Will  
Illinois cities: Canton, Chester, Crest Hill, Danville, East Moline, Galesburg,  
Jacksonville, Pontiac, Robinson, St. Charles  
Indiana counties: Vigo  
Indiana cities: Crown Point, Terre Haute  
Kentucky counties: Casey, Elliott, Lee, Marion, McCreary, Morgan, Oldham  
Kansas counties: Leavenworth  
Kansas cities: Lansing  
Louisiana parishes: Avoyelles, Caldwell, Clairborne, Concordia, East Carroll,  
East Feliciana, Evangeline, Grant, Iberville, La Salle, Richland, West Carroll,  
West Feliciana, Winn  
Louisiana cities: Town of Amite City, Oakdale  
Maine school districts: MSAD 40 (Knox County)  
Maryland counties: Somerset  
Maryland cities: Baltimore  
Michigan counties: Branch, Gogebic, Saginaw  
Mississippi counties: Adams, Greene, Sunflower, Tallahatchie  
Mississippi cities: Holly Springs, Lucedale  
Missouri counties: Cole, Pike, Randolph  
Missouri cities: Bonne Terre, Clayton, Farmington, Hillsboro, Jefferson, Licking,  
Tipton, Vandalia  
Nebraska counties: Johnson  
New Jersey cities: Camden  
New York counties: Cayuga, Clinton, Dutchess, Essex, Franklin, Genesee,  
Greene, Oneida, Orleans, Seneca, St. Lawrence, Westchester  
New York cities: Beacon, Brookhaven (town)  
North Carolina counties: Caswell, Columbus  
Ohio cities: Lima  
Oklahoma counties: Alfalfa, Blaine, Greer, Holdenville, Hominy, Woods  
Oklahoma cities: Lawton, Town of McLoud, Sayre, Watonga  
South Carolina counties: Allendale, Edgefield, Lee, Marlboro, McCormick  
South Dakota: Bon Homme  
Texas counties: Anderson, Bastrop, Bee, Bowie, Brazoria, Brown, Burnet,  
Cherokee, Childress, Concho, Coryell, Dawson, DeWitt, Dickens, Duval,  
Fannin, Freestone, Frio, Garza, Hale, Haskell, Houston, Howard, Jack, Jones,  
Karnes, Kinney, La Salle, Live Oak, Madison, Medina, Mitchell, Pecos,  
Potter, Reeves, Rusk, Terry, Walker, Wichita, Willacy  
Texas cities: Big Spring, Brownfield, Bryan, Henderson, Huntsville, Karnes City,  
Mineral Wells, Post, Victoria  
Texas school districts: Fort Stockton Independent School District, Marlin  
Independent School District

Virginia counties: Brunswick, Greensville, Lee, Prince George, Richmond, Sussex  
West Virginia cities: Moundsville  
Wisconsin counties: Crawford  
Wisconsin cities: Baraboo, New Lisbon, Portage, Prairie du Chien, Stanley