



ACLU OF KENTUCKY

PRISON GERRYMANDERING IN KENTUCKY

KEVIN MUENCH, ACLU-KY EQUAL JUSTICE LEGAL FELLOW

This briefing paper is not intended to provide legal advice.

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PRISON GERRYMANDERING HAS NO PLACE IN A DEMOCRATIC SYSTEM.

- KEVIN MUENCH,
ACLU-KY LEGAL FELLOW



INTRODUCTION

For the foreseeable future, voters in Kentucky will cast ballots in districts drastically warped by prison gerrymandering – the practice of counting incarcerated voters based on the location of their prison, instead of their home district. This report discusses the essentials of prison gerrymandering, the empirical impact on Kentucky elections, and potential solutions.

OVERVIEW

Redistricting is the process the country undergoes every 10 years to redraw their federal, state, and local legislative maps. Maps are drawn based on decennial Census data, and the maps are used for all elections for the ensuing decade. During the process, map drawers must create districts that are roughly equally¹ populated, adhere with laws, and represent the district. A crucial principle of redistricting in a democratic society is ensuring that each person’s vote counts equally. In most states – 33 out of 50, including Kentucky – the maps are drawn by legislators.

But sometimes legislators put their thumb on the scale to ensure that votes are not counted equally. Indeed, legislators themselves may draw the districts from which they will be elected, allowing those legislatures to essentially select their preferred voters.² This practice is known as gerrymandering.

Maps are further distorted by prison gerrymandering: the practice of apportioning incarcerated people to the legislative district of their prison, instead of their home district. The Census generally locates people based on where they “live and sleep most of the

time.”³ So states are, by default, given data that will count incarcerated people at the place of their incarceration during apportionment. But because incarcerated people generally cannot vote, the votes of people in districts with prisons become more heavily weighted than the votes of peers in districts without prisons. Prison gerrymandering has existed since the first census in 1790, but its impact has skyrocketed recently due to ballooning prison populations⁴ and racialized mass incarceration.⁵

Fortunately, some states and municipalities have begun outlawing prison gerrymandering, and the nascent litigation space has proven promising.⁶

³ Final 2020 Census Residence Criteria and Residence Situations, 83 Fed. Reg. 5525 (Feb. 8, 2018) (to be codified at 15 C.F.R. ch. 1), <https://www.govinfo.gov/content/pkg/FR-2018-02-08/pdf/2018-02370.pdf>.

⁴ Julie A. Ebinstein, *The Geography of Mass Incarceration: Prison Gerrymandering and the Dilution of Prisoners’ Political Representation*, 45 *Fordham Urb. L.J.* 323 (2018).

⁵ Dr. Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons* (Oct. 13, 2021), <https://www.sentencingproject.org/reports/the-color-of-justice-racial-and-ethnic-disparity-in-state-prisons-the-sentencing-project/>.

⁶ Andrea Fenster, *How many states have ended prison gerrymandering? About a dozen!* (Oct. 26, 2021), https://www.prisonersofthecensus.org/news/2021/10/26/state_count/.

² Ballotpedia, *State-by-state redistricting procedures* (last visited Sept. 4, 2024), https://ballotpedia.org/State-by-state_redistricting_procedures.

¹ Democracy Docket, *Redistricting 101: How Politicians Choose Their Voters* (last visited Sept. 4, 2024), <https://www.democracymocket.com/analysis/redistricting-101-how-politicians-choose-their-voters/>.

HARMS OF PRISON GERRYMANDERING

Prison gerrymandering causes various harms across Kentucky. The first harm of prison gerrymandering is vote dilution. Because incarcerated people cannot vote (outside of Maine and Vermont), a district that contains a prison can technically contain the same number of people as a district without a prison, but only a small fraction of that district can actually vote. As a result, the voters in the district with a prison vote with greater weight than peer voters in districts without prisons. In fact, this distortion is double counted, because “a disproportionate share of prisons and inmates are located in rural areas, while a disproportionate share of inmates are from urban areas.”⁷ Urban areas experience both artificial population reduction and vote dilution.

If districts were reapportioned to counteract prison gerrymandering, districts would look significantly different nationwide. For instance, a 2010 study found that 60% of incarcerated people in Illinois called Cook County (which contains Chicago) their home.⁸ But 90% of Illinois’ prisons were incarcerated in prisons outside of Chicago. Moreover, every prison built since 1941 in Illinois is more than 100 miles away from Chicago, and the average distance is more than 200 miles from the city.⁹ This creates distortive effects statewide. At a local level, rural Lee County had four districts of about 9,000 people each.¹⁰ But district four included 2,200 people incarcerated in Dixon Correctional Center.¹¹ As a result, approximately every 7 voters in district four had the same voting power as 10 voters in another district.

A similar 2019 study in Pennsylvania found that if prison gerrymandering were accounted for, four of Pennsylvania’s State House districts would be too small to adhere to the *Reynolds v. Sims* “one person one vote” standard, and four districts would be too large.¹² Pennsylvania is currently a very closely divided State House and therefore an eight-district swing could

have dramatic effects on state policy.

But this is not the only harm. Prison gerrymandering compounds the harms of racial injustices in our criminal legal system. The Census has counted people at the location of their prisons since the first census in 1790. But prison populations have since exploded in a racialized fashion under the explicitly racist post-Reconstruction criminal legal system and the more veiled “war on drugs” model.¹³ Today, roughly 2.2 million people are held in prison or jail,¹⁴ a monumental increase from the 500,000 people incarcerated in 1980.¹⁵ Black and Latino people make up 56% of the incarcerated population, but only 32% of the US population.¹⁶ Yet, prisons are built in predominantly white areas.¹⁷ This mismatch inflates the political power of rural, white voters at the expense of both incarcerated Black and Latino people and their home communities who are already targeted by the mass incarceration. Critics have likened this dynamic to the Three-Fifths Compromise, which allowed Southern States to count enslaved Black people during apportionment while prohibiting them from voting.¹⁸ Because of this state of affairs, communities of color have been central in the fight to end prison gerrymandering. For instance, Indigenous communities led the charge in Montana, where only 6% of Montanans are Indigenous but nearly a quarter of the state’s prison population.¹⁹

Furthermore, prison gerrymandering strips incarcerated people of their political representation and incentivizes opposing criminal justice reform. Because of felony disenfranchisement, prisoners do not vote outside of Maine and Vermont. And some lawmakers, despite representing people in prisons, have been quite open that they do not truly consider such people to be constituents. In Anamosa, Iowa, Danny Young won a position on City Council with two write-in votes, from his wife and a neighbor.²⁰ Nominally, his ward has the

¹³ *Supra* note 4.

¹⁴ *Supra* note 4.

¹⁵ *Id.*

¹⁶ NAACP, *Criminal Justice Fact Sheet* (last visited Sept. 4, 2024), <https://naacp.org/resources/criminal-justice-fact-sheet>.

¹⁷ NAACP, *Case: Prison-Based Gerrymandering Reform* (last visited Sept. 4, 2024), <https://www.naacpldf.org/case-issue/prison-based-gerrymandering-reform/>.

¹⁸ Shana Iden, *A Modern-Day 3/5 Compromise: The Case for Finding Prison Gerrymandering Unconstitutional Under the Thirteenth Amendment*, 1 *Fordham L. Voting Rts. & Democracy F.* 193 (2023).

¹⁹ See, e.g., Arren Kimbel-Sannit, *Bill would address ‘prison gerrymandering’ in Montana* (Jan. 18, 2023), <https://montanafreepress.org/2023/01/18/bill-would-help-resolve-montana-prison-gerrymandering/>; Prison Policy Initiative, *Native incarceration in the U.S.* (last visited Sept. 4, 2024).

²⁰ Sam Roberts, *Census Bureau’s Counting of Prisoners Benefits Some Rural Voting Districts* (Oct. 23, 2008), <https://www.nytimes.com/2008/10/24/us/politics/24census.html>.

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same number of constituents as peer wards: roughly 1,400 people. But Mr. Young’s ward also contained a prison housing 1,300 individuals, rendering his district nearly entirely people in that prison. When asked about his constituents, Mr. Young stated: “Do I consider them my constituents? They don’t vote, so, I guess, not really.”²¹ Meanwhile, incarcerated people maintain more meaningful connections to their home districts, where their families and communities of interest might remain.

For these same reasons, politicians who benefit from prison gerrymandering are perversely incentivized to oppose criminal justice reform. A substantial portion of their constituency are people who cannot vote but count for purposes of sustaining the district’s size, and it would make little political sense for a politician to support policy that reduces their constituency and forces reapportionment.

Finally, prison gerrymandering is overwhelmingly

unpopular. In 2016, the Census bureau solicited comments regarding counting incarcerated people as residents of their own community. The Bureau received about 77,887 comments and only 24 commenters opposed accurately apportioning districts.²² State and local politicians are starting to take notice: over a dozen states and 200 municipalities have ended or restricted prison gerrymandering.²³

Our analysis indicates that at least two State House, six Senate seats, and 14 locally elected positions likely violate the Equal Protection clause of the Fourteenth Amendment’s guarantee of “one person, one vote.” Apportionment is constitutionally suspect if a district’s population is 5% larger or smaller than the average, baseline district.²⁴ Prison gerrymandering litigation is in its early stages, but the existing case law indicates that the baseline should *exclude* prisoner populations.²⁵

²² *Federal Register, Final 2020 Census Residence Criteria and Residence Situations* (Feb. 8, 2018), <https://www.federalregister.gov/documents/2018/02/08/2018-02370/final-2020-census-residence-criteria-and-residence-situations#p-22>.

²³ Prison Policy Initiative, *Solutions* (last visited Sept. 4, 2024), <https://www.prisonersofthecensus.org/solutions.html>.

²⁴ See e.g., *Larios v. Cox*, 300 F. Supp. 2d 1320, 1340-41 (N.D. Ga. 2004).

²⁵ *Calvin v. Jefferson Cty Bd of Commissioners*, 172 F.Supp.3d 1292, 1323-24 (N.D. Fl. 2016).

PRISON GERRYMANDERING IN KENTUCKY

Our research indicates that the majority of gerrymandered districts, when adjusted to exclude prisoner populations, are significantly smaller than the average district, giving their voters vastly more meaningful votes than peers in districts without prisons. Below are our empirical conclusions.

STATE HOUSE

District Number ²⁶	Total Pop.	White	Black	Other	Adjusted Total Pop. [total pop. minus incarcerated pop.] ²⁷	Adjusted Total Pop. difference from Avg. District Pop. ²⁸
33	43,242	35,305	3,468	4,469	42,657	-5.33%
52	47,241	43,506	1,536	2,199	47,385	5.17%

STATE SENATE

District Number ²⁹	Total Pop.	White	Black	Other	Adjusted Total Pop. [total pop. minus incarcerated pop.] ³⁰	Adjusted Total Pop. difference from Avg. District Pop. ³¹
6	115,027	94,798	9,196	11,033	112,226	-5.35%
17	124,388	107,059	7,910	9,419	124,573	5.06%
22	124,346	98,698	13,956	11,692	124,522	5.02%
23	124,381	104,439	9,361	10,581	124,674	5.14%
27	124,449	106,395	9,197	8,857	124,547	5.04%
34	124,493	104,307	9,660	10,526	124,731	5.19%

LOCAL DISTRICTS

County	Position	Seat	Population ³²	Incarcerated Population	Average District ³³	Adjusted Total Pop. difference from Avg. District Pop. ³⁴
Elliott	Magistrate	#5	1,896	983 ³⁵	1,045	-12.7%
Floyd	Magistrate	#3	7,005	621 ³⁶	8,993	-29.0%
Floyd	Board of Education	#4	8,148	621 ³⁷	8,486	-11.3%
Lyon	Magistrate	#1	3,014	856 ³⁸	2,893	-25.4%
Lyon	Magistrate	#2	2,835	693 ³⁹	2,893	-25.97%
Morgan	Magistrate	#1	4,272	1,914 ⁴⁰	2,745	-14.1%
Muhlenberg	Magistrate	#1	5,505	982 ⁴¹	6,186	-26.9%
Muhlenberg	Board of Education	#1	5,505	982 ⁴²	6,186	-26.9%
Oldham	Magistrate ⁴³	#2	7,032	2,289 ⁴⁴	7,023	-32.5%
Oldham	Magistrate ⁴⁵	#3	6,757	1,200 ⁴⁶	7,023	-20.9%
Oldham	Board of Education ⁴⁷	#4	11,291	1,200 ⁴⁸	11,237	-10.2%
Oldham	Board of Education ⁴⁹	#5	11,873	2,289 ⁵⁰	11,237	-14.7%
Shelby	Magistrate	#2	6,854	713	6,866	-10.6%
Shelby	Board of Education	#1	8,466	713	8,411	-7.8%

³² Through open records requests filed with respective county clerks, we gathered the legislative maps and population data used by each county during apportionment, unless the maps and population data were publicly posted online.

³³ Average district population calculated based on data gathered through open records requests and publicly available data.

³⁴ The calculation to determine variance from target district size is: Adjusted Total Population minus Average District Population divided by Average District Population.

³⁵ District contains Little Sandy Correctional Complex. Underlying data from About Little Sandy Correctional Complex - Department of Corrections (ky.gov) (last visited 8/19/2024).

³⁶ District contains Southeast State Correctional. Underlying data from Southeast State Correctional Complex - Department of Corrections (ky.gov) (last visited 8/19/2024).

³⁷ Id.

³⁸ District contains Kentucky State Penitentiary. Underlying data from Kentucky State Penitentiary - Department of Corrections (last visited 8/19/2024).

³⁹ District contains Western Kentucky Correctional Complex. Underlying data from Home - Department of Corrections (ky.gov) (last visited 8/19/2024).

⁴⁰ District contains Eastern Kentucky Correctional Complex. Underlying data from Eastern KY Correctional Complex - Department of Corrections (last visited 8/19/2024).

⁴¹ District contains Green River Correctional Complex. Underlying data from Green River Correctional Complex - Department of Corrections (ky.gov) (last visited 8/19/2024).

⁴² Id.

⁴³ Oldham County Magisterial Districts (last visited Sept. 4, 2024), https://oldham.countyclerk.us/wp-content/uploads/sites/65/2021/04/Mag_dist_all.pdf.

⁴⁴ District contains Kentucky State Reformatory with 1,051 prisoners, and Roederer Correctional with 1,238 prisoners. Population data from Kentucky State Reformatory - Department of Corrections and About Roederer Correctional Complex - Department of Corrections (ky.gov) (last visited 8/19/2024).

⁴⁵ Id.

⁴⁶ District contains Luther Luckett with 1,200 prisoners. Population data from Luther Luckett Correctional Complex - Department of Corrections (ky.gov) (last visited 8/19/2024).

⁴⁷ School-Board-Map_11x17.pdf (countyclerk.us)

⁴⁸ District contains Luther Luckett with 1,200 prisoners. Population data from Luther Luckett Correctional Complex - Department of Corrections (ky.gov) (last visited 8/19/2024).

⁴⁹ Id.

⁵⁰ District contains Kentucky State Reformatory with 1,051 prisoners, and Roederer Correctional with 1,238 prisoners. Population data from Kentucky State Reformatory - Department of Corrections and About Roederer Correctional Complex - Department of Corrections (ky.gov) (last visited 8/19/2024).

²⁶ Data sourced from publicly available census data.

²⁷ Data sourced from publicly available census data.

²⁸ The calculation to determine variance from target district size is: Adjusted Total Population minus Average District Population divided by Average District Population.

²⁹ Supra note 26.

³⁰ Supra note 27.

SOLUTIONS

There are two primary solutions to prison gerrymandering in Kentucky: policy advocacy and litigation.

Policy advocacy is a particularly attractive solution, because it can be applied to this issue at the state or local level. At either level, the state of Kentucky or a municipality could minimize the impact or prison gerrymandering by using population data during redistricting that (1) excludes correctional populations, or better yet, (2) reapportions incarcerated people to their home communities. To date, over a dozen states and 200 municipalities have taken this approach.⁵¹

The Census Bureau recognizes that many states and municipalities wish to take this approach and now makes all the necessary data available. That data exists in the Group Quarters data as table P5 within the PL94-171 redistricting dataset that the Census made available to each state.⁵² This table reports the number of people in correctional facilities within each block, enabling states and municipalities to remove incarcerated populations during apportionment.⁵³ This data also exists online for advocates to access, as part of the Prison Policy Initiatives data page: <http://www.prisonersofthecensus.org/data/>. Ideally, states and municipalities seeking to end prison gerrymandering would combine this data with the home addresses of incarcerated individuals to more accurately apportion the population.

Litigation also may present a possible path to addressing prison gerrymandering. To date, the bulk of prison gerrymandering litigation has been defensive: states and municipalities defending laws that were intended to end prison gerrymandering.⁵⁴ And while affirmative litigation is a nascent field, a few cases exist to guide advocates.

The most likely claim arises under the “**one person, one vote**” doctrine. The Equal Protection Clause of the Fourteenth Amendment requires that electoral districts “be apportioned on a population basis.”⁵⁵ This requires “that a [s]tate make an honest and good faith effort to

construct districts . . . as nearly of equal population as is practicable.”⁵⁶ Given that “[m]athematical exactness or precision is hardly a workable constitutional requirement,” states and localities may construct districts that are roughly equal in size.⁵⁷ This has been interpreted to generally allow districts that are 5% larger or smaller than the average district, although this 10% “safe harbor” is not a hard and fast rule.⁵⁸ A redistricting map “presumptively complies with the one-person, one-vote rule” if the “maximum population deviation between the largest and the small district is less than 10%” when measured against a baseline district.⁵⁹ However, if a redistricting map results in a population deviation of 10% or more between the smallest and largest district, plaintiffs have established a prima facie case of an Equal Protection violation.⁶⁰ The defendant must then establish that the plan is “an honest good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable.”⁶¹ The state must show that the “legislature’s plan may reasonably be said to advance a rational state policy and, if so, whether the population disparities among the districts that have resulted from the pursuit of this plan exceed constitutional limits.”⁶²

This standard has been applied in the prison gerrymandering context three times: *Calvin v. Jefferson County Board of Commissioners*,⁶³ *NAACP v. Merrill*,⁶⁴ and *Davidson v. City of Cranston*.⁶⁵

Most notably, in *Calvin*, Jefferson County, Florida configured its five Board of Commissioners and School Board seats such that District 3 was more than one-third prisoners.⁶⁶ Plaintiffs claim was straightforward: inclusion of prisoners during redistricting artificially diluted the voting power of people in districts without prisons. Judge Walker offered two tests for when the Constitution might require adjusting apportionment figures to account for prison populations. First, he outlined a “representational nexus” theory, wherein “[Plaintiffs] have to show that the JCI inmates

comprise a (1) large number of (2) nonvoters who (3) lack a meaningful representational nexus with the [School Board and Board of Commissioners], and that they’re (4) packed into a small subset of legislative districts.”⁶⁷ By his reasoning, the most important feature is whether the people included in apportionment have “a meaningful or substantial representational nexus with a given legislative body.”⁶⁸ In *Jefferson County*, the District 3 representative stated during a deposition that he had never responded to a prisoner’s letter.⁶⁹ Undoubtedly, prisoners who lack the right to vote and are hardly considered constituents cannot be said to have a representational nexus with their electeds. As a result, Judge Walker found the maps violated the Equal Protection Clause. Second, Judge Walker offered an ‘arbitrariness’ test wherein localities may be prohibited from “arbitrarily” using census data when the baseline is too drastically warped by prison populations. In *Jefferson County*, District 3 was 42.63% off from the proper non-prisoner baseline, which is both well outside the 10% safe-harbor and “simply too large to be ignored.”⁷⁰ A litigant in Kentucky may be able to meet either of these tests, given what we know about the dilutive effects of prison gerrymandering and how insufficiently prisoners are representative by their electeds.

Merrill strikes out a similar path as *Calvin*, albeit less forceful. Plaintiffs in Connecticut brought suit alleging that the state redistricting plan violated the Fourteenth Amendment’s one person, one vote principle by counting incarcerated people at the location of their prisons.⁷¹ The state moved to dismiss, arguing that it was immune under the Eleventh Amendment. The state lost, appealed, and the Second Circuit affirmed that this case fell within an Ex Parte Young exception to the Eleventh Amendment,⁷² allowing the case to move forward.⁷³ The case was ultimately dismissed voluntarily, but Merrill represents the first time a court ruled on the Eleventh Amendment’s applicability to a statewide prison gerrymandering challenge.

Davidson offers the alternative view. The City of Cranston, Rhode Island was apportioned into six wards

with approximately 13,500 people each.⁷⁴ But Ward Six contained 3,433 prisoners making the maximum deviation among the population of wards roughly 35%.⁷⁵ The district court granted summary judgment for the plaintiffs who challenged apportionment, concluding that the “representation nexus” test in *Calvin* applies to Cranston’s inclusion of the prison’s population during redistricting.⁷⁶ However, the First Circuit reversed the district court, applying the Supreme Court’s decision in *Evenwel*, which was not about prison gerrymandering.⁷⁷ In *Evenwel*, the Supreme Court held that states are not constitutionally required to use voter-eligible populations during apportionment and are permitted to use total population figures.⁷⁸ The *Davidson* court interpreted this to mean that one person, one vote requirements are satisfied where total population figures, including prisoners, are used for apportionment.

We believe this holding is deficient for two reasons. First, the court does not recognize that using prisoner-exclusive figures is different from using voter-eligible figures. In this misunderstanding, the court ignores the question of whether one person, one vote mandates using prisoner-exclusive figures. This issue further demonstrates how the First Circuit failed to grapple with the key issue of prison gerrymandering. Moreover, the court wholly failed to engage with the ‘arbitrariness’ test outlined in *Calvin*.

Advocates can take a few points from these cases. Most importantly, prison gerrymandering litigation is in its fledgling days, but claims under the one person, one vote doctrine are possible at both a statewide and local level. Although, some courts, state or federal, may be antagonistic to these sorts of claims. And as with any redistricting litigation, a successful claim will need to be supported by data, which can be difficult to obtain. Finally, the most successful claims will likely be at the local level, where distortive effects are most pronounced.

⁵¹ *Supra* note 22.
⁵² For information about using PL 94-171 tables, please see Aleks Kajstura, *Using the Census Bureau’s PL94-171 Group Quarters Population Table, PRISON POLICY INITIATIVE* (Aug. 26, 2020), <https://www.prisonersofthecensus.org/technicalolutions2020.html>.
⁵³ *Id.*
⁵⁴ See, e.g., *In re Initiative Petition No. 426, State Question No. 810, 465 P.3d 1244* (Ok. 2020); *Little v. LATFOR*, No. 2310-2011 (N.Y. Supreme Court, Dec. 1, 2011); *Fletcher v. Lamone, RWT11cc3220* (D. Md. Dec. 23, 2011).
⁵⁵ *Reynolds v. Sims, 377 U.S. 533, 568* (1964).

⁵⁶ *Id.*
⁵⁷ *Id.*
⁵⁸ See e.g., *Larios v. Cox, 300 F. Supp. 2d 1320, 1340-41* (N.D. Ga. 2004) (“[T]he very fact that the Supreme Court has described the ten percent rule in terms of “prima facie constitutional validity” unmistakably indicates that 10% is not a safe harbor.”)
⁵⁹ *Evenwel v. Abbott, 136 S. Ct. 1120, 1124* (2016).
⁶⁰ *Braun v. Thomson, 462 U.S. 835, 842-43* (1983).
⁶¹ *Reynolds, 377 U.S. at 577.*
⁶² *Braun, 462 U.S. at 843.*
⁶³ *Calvin v. Jefferson Cty Bd of Commissioners, 172 F.Supp.3d 1292, 1323-24* (N.D. FL 2016).
⁶⁴ *NAACP v. Merrill, 2019 WL 4917537* (D. Ct. Feb. 15, 2019).
⁶⁵ *Davidson v. City of Cranston, 188 F. Supp. 3d 146, 149-52* (D.R.I.), *rev’d, 837 F.3d 135* (1st Cir. 2016).
⁶⁶ *Calvin, 172 F.Supp.3d at 1297.*

⁶⁷ *Id. at 1315.*
⁶⁸ *Id. at 1312.*
⁶⁹ *Id. at 1322.*
⁷⁰ *Id. at 1324*
⁷¹ *NAACP v. Merrill, 939 F.3d 470* (2nd Cir. 2019).
⁷² *NAACP v. Merrill, 2019 WL 4917537, *4* (D. Ct. Feb. 15, 2019).
⁷³ *Supra* note 60.

⁷⁴ *Davidson v. City of Cranston, Rhode Island, 837 F.3d 135, 138* (1st Cir. 2016).
⁷⁵ *Id.*
⁷⁶ *Id. at 139-41.*
⁷⁷ *Id. at 141* (citing *Evenwel v. Abbott, 578 U.S. 54* (2016)).
⁷⁸ *Evenwel, 578 U.S. at 57.*

CONCLUSION

Prison gerrymandering impacts at least two State House, six Senate seats, and 14 locally elected positions at constitutionally questionable levels. These distortions dilute voting power, compound the harms of racial injustice, rob people of political representation, and are plainly unpopular policy. But both advocacy and litigation present avenues to create change at the local and state levels. Going forward, we hope advocates and litigants will consider devoting time to this critical civil rights issue.

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This briefing paper is not intended to provide legal advice.

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