



**Testimony for the Senate Education, Health, and Environmental Affairs Committee
February 18, 2021**

SB 619 – “No Representation Without Population Act – Repeal”

The Campaign Legal Center (“CLC”) firmly opposes the reinstatement of prison-based gerrymandering in Maryland, and we urge you to reject SB 619.

CLC is a nonprofit organization dedicated to protecting and strengthening the democratic process across all levels of government. Since the organization’s founding in 2002, CLC has not only participated in major redistricting, voting rights, and campaign finance cases before the U.S. Supreme Court and federal and state courts across the country; it has also worked to advance federal, state, and local policy promoting democratic reform.

CLC believes that fair districts—and by extension, fair and accurate procedures for counting district populations—are vital to our democracy. Repealing the No Representation Without Population Act and reinstating prison-based gerrymandering in Maryland would distort the redistricting process and deprive Maryland communities of the fair and equal representation that they deserve.

Prison-based gerrymandering distorts our democracy by counting incarcerated individuals where they are in prison rather than their legal residency for the purposes of redistricting. In systems that permit prison-based gerrymandering, elected officials in jurisdictions that house prisons “represent” large populations of people—disproportionately low-income, people of color—who have no connection to the area, who cannot vote there, and who have no friends, family, or community of interest that can advocate on their behalf. Prison-based gerrymandering also artificially inflates the voting power of districts with prisons, while disempowering communities where the incarcerated individuals lived before and where they will ultimately return—their legal residence. This distortion often disproportionately affects urban communities and communities of color. And, because districts are drawn decennially, these skewed population counts are locked in place for the next decade.

Maryland has long led the fight against this unjust practice. With the passage of the No Representation Without Population Act, Maryland became the first state in the nation to abolish prison-based gerrymandering in 2010, and it should not go back on that decision today. After Maryland ended prison-based gerrymandering in 2010, California, Colorado, Delaware, Nevada, New Jersey, New York, Virginia, and Washington State soon followed.¹ Other states, such as Michigan and Tennessee, now prohibit or discourage local governments from engaging in prison-based

¹ *Momentum Is Building to End Prison-Based Gerrymandering*, Prison Policy Initiative (2020), <https://www.prisonpolicy.org/graphs/momentum.html>.

gerrymandering.² And hundreds of county and municipal governments across the country have also rejected prison-based gerrymandering.³ Maryland should not repeal its own law and slow the momentum of the movement it began.

I. Reinstating prison-based gerrymandering would deprive Maryland citizens of fair and equal representation.

The No Representation Without Population Act is just as vital for our democracy today as it was in 2010. There are approximately 23,500 people in state and federal prisons in Maryland.⁴ The vast majority of these individuals are incarcerated in rural or suburban communities, which are often many miles away from their homes.⁵ Repealing the No Representation Without Population Act would unjustly disempower urban communities and communities of color, while compromising the overall accuracy of redistricting in Maryland.

A. Prison-based gerrymandering disenfranchises urban communities.

First, reinstating prison-based gerrymandering would unjustly dilute the voting power of urban communities across the state. For instance, even though one-third of Maryland's incarcerated population is from Baltimore, 83% of the state's correctional facilities are located in rural or suburban communities outside of Baltimore.⁶

By contrast, in 2010, 64% of the population of the First County Commission District in Somerset County was located in a large prison. "As a result, each resident in that district had 2.7 times as much influence as residents in other districts."⁷ Similarly, 18% of residents in County Commission District 2B were incarcerated, which "gave every four District 2B residents as much political influence as five residents elsewhere in the state."⁸ Repealing the No Representation Without Population Act would reinstate this unequal representation of urban communities that existed prior to 2010.

B. Prison-based gerrymandering dilutes the voting power of communities of color.

Second, repealing the No Representation Without Population Act would also disproportionately affect communities of color. There are significant racial disparities in Maryland's

² *Id.*

³ *Local Governments that Avoid Prison-Based Gerrymandering*, Prison Policy Initiative (Jan. 7, 2019), <https://www.prisonersofthecensus.org/local/>.

⁴ *Maryland Profile*, Prison Policy Initiative (2018 data), <https://www.prisonpolicy.org/profiles/MD.html>. This figure excludes people incarcerated in local jails (approximately 11,000).

⁵ Erika L. Wood, *One Significant Step: How Reforms to Prison Districts Begin to Address Political Inequality*, 49 U. MICH. J. L. REFORM 179, 187 (2015) (citing *Correctional Facility Locator*, Md. Dep't of Pub. Safety & Corr. Servs., <http://www.dpscs.state.md.us/locations/prisons.shtml>).

⁶ *Id.* at 186-87 (citing *The Right Investment? Corrections Spending in Baltimore City*, JUSTICE POLICY INST. & PRISON POLICY INITIATIVE 2 (2015), http://www.justicepolicy.org/uploads/justicepolicy/documents/rightinvestment_design_2.23.15_final.pdf).

⁷ *Id.* at 187 (citing Peter Wagner & Olivia Cummings, *Importing Constituents: Incarcerated People & Political Clout in Maryland*, Prison Gerrymandering Project, Prison Policy Initiative (Mar. 4, 2010), <http://www.prisonersofthecensus.org/md/report.html>; *Ending Prison-Based Gerrymandering Would Aid the African-American Vote in Maryland*, Prison Policy Initiative (2010), <https://www.prisonersofthecensus.org/factsheets/md/africanamericans.pdf>).

⁸ *Id.* (citing *Ending Prison-Based Gerrymandering Would Aid the African-American Vote in Maryland*, Prison Policy Initiative (2010), <https://www.prisonersofthecensus.org/factsheets/md/africanamericans.pdf>).

prisons: Black people make up 68% percent of Maryland’s incarcerated population, even though they comprise only 29% percent of the total state population.⁹ Before 2010, many of Maryland’s rural and suburban districts were built on Black “ghost voters,” who counted towards the district’s population for the purposes of redistricting, but could not vote due to their incarceration.¹⁰ This practice, in turn, denied many Black communities, where these individuals were from, fair representation.

In many ways, these effects of prison-based gerrymandering harken back to the three-fifths compromise—abusing state power to disproportionately disenfranchise citizens of color and count them in a way that often inflates the power of predominantly white communities.¹¹ Maryland should not backslide into that dark history.

C. Prison-based gerrymandering undermines the accuracy of redistricting.

Third, reinstating prison-based gerrymandering would compromise the accuracy of the population count, and thus redistricting, in Maryland. Because the average length of time served in Maryland state prisons is 2.5 years,¹² it makes no sense to count incarcerated individuals where they are in prison for the purposes of redistricting—which lasts an entire decade. For these reasons, the Maryland legislature should reject SB 619 and vote to preserve fair representation in Maryland’s decennial redistricting.

II. Maryland’s decision to abolish prison-based gerrymandering in 2010 was a resounding success.

Maryland successfully implemented the No Representation Without Population Act during the 2010 redistricting cycle. Maryland’s process for counting incarcerated people at their last known address based on coordination between the Maryland Department of Public Safety and Correctional Services and the Maryland Department of Planning worked effectively.¹³ And, in 2012, the U.S. Supreme Court affirmed Maryland’s authority to count incarcerated individuals at their previous known address for the purposes of redistricting.¹⁴

Maryland’s efforts to eliminate prison-based gerrymandering also helped catalyze a national movement that is still ongoing, as noted earlier. This movement is rooted in broad-based popular support. Just recently, for instance, over 99% of the comments from the public on the 2020 Census supported counting prisoners at their last known residence: “Of the 77,887 comments pertaining to [where] prisoners [are to be counted], 77,863 suggested that prisoners should be counted at their home or pre-incarceration address.”¹⁵ Maryland should not renege on its national leadership on this issue.

⁹ *Maryland Profile*, Prison Policy Initiative, <https://www.prisonpolicy.org/profiles/MD.html>.

¹⁰ Garima Malhotra, *Maryland Ends Prison-Based Gerrymandering*, Brennan Ctr. (May 4, 2010), <https://www.brennancenter.org/our-work/analysis-opinion/maryland-ends-prison-based-gerrymandering>.

¹¹ See Andrew Marantz, *The Five-Fifths Clause*, Slate (Nov. 6, 2006), <https://slate.com/news-and-politics/2006/11/how-we-count-and-use-our-prisoners.html>; John C. Drake, *Locked Up and Counted Out: Bringing an End to Prison-based Gerrymandering*, 37 WASH. U. J. L. & POLICY 237, 238 (2011).

¹² Wood, *supra* note 5, at 187.

¹³ Wood, *supra* note 5, at 193.

¹⁴ *Fletcher v. Lamone*, 831 F. Supp. 2d 887, 891 (D. Md. 2011), *aff’d*, 567 U.S. 930 (2012).

¹⁵ Final 2020 Census Residence Criteria and Residence Situations, 85 Fed. Reg. 5,526 (Feb. 8, 2018), <https://www.federalregister.gov/documents/2018/02/08/2018-02370/final-2020-census-residence-criteria-and-residence-situations>.

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A decade ago, this legislature took bold action to uphold the principle of equal representation that lies at the heart of our democratic system. It chose to count incarcerated individuals where they should be counted—at their legal residence. And, by doing so, it corrected the distortion of representative power that disempowered urban communities and communities of color and undermined the accuracy of Maryland’s decennial redistricting. This legislature should not erase that progress. For these reasons, we urge the Maryland legislature to reject SB 619.