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TESTIMONY IN SUPPORT OF ASSEMBLY BILL NO. 659

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ASSEMBLY JUDICIARY COMMITTEE

February 10, 2014

Thank you Chairman McKeon and other members of the Committee for the opportunity to speak in support of A-659 to create a more just system of apportionment. My name is Alexander Shalom. I am Senior Staff Attorney for the American Civil Liberties Union of New Jersey. The ACLU is a private, non-profit organization founded in 1920 to promote and defend the founding American principles of freedom, justice and equality. We have nearly 12,000 members in New Jersey and hundreds of thousands nationwide.

The bill before you today, A-659, would finally correct the way our state's redistricting formula apportions our population by counting incarcerated New Jerseyans, who are prohibited from voting, at their address before incarceration, not the address of their jail or prison.

As a preliminary matter, our democratic system hinges on our adherence to the most basic of constitutional principles: one person, one vote.

But New Jersey's current system flips that guarantee on its head by counting incarcerated people where they are confined. Because prisoners cannot vote in New Jersey, this method of counting artificially increases the population of communities located near prisons, while shrinking the population of communities from where prisoners come. In turn, this makes the vote of somebody who lives near a prison *more powerful* than the vote of somebody who lives away from one. This manipulation of the apportionment of political power away from prisoners' home districts and to the districts where they are imprisoned is a process known across the country as prison-based gerrymandering.

By way of illustration, Cumberland County is home to three large prisons, which account for almost five percent of the total county population. By counting prisoners in Cumberland's population, we significantly and artificially inflate the voting power of residents living in Cumberland County. Camden and Essex counties each house a prison, but the number of

residents from those counties who wind up in prison is far greater than the number of prisoners they receive. As a result, the voting power in those counties is artificially diluted.

Although a prisoner's last address before incarceration is not a perfect proxy for his home, as a general rule, we know that the place where a person lives when arrested is the best indicator of where he will call home once released. In addition, there is no question that the interests of a prisoner would be better represented by their loved ones than by residents of the district in which they are detained and with which they may otherwise have no connection. No system of counting disenfranchised prisoners will completely eliminate the political imbalances caused by disenfranchisement, but counting prisoners in their home districts mitigates the unfairness.

Like our criminal justice system broadly, this practice also has a disproportionate impact on the voting power of communities of color in New Jersey. While Black and Latino New Jerseyans make up approximately 31 percent of our population, they make up approximately 77 percent of our prison population. In turn, prison-based gerrymandering dilutes the voting power of Black and Latino communities, particularly in our cities.

In order to avoid artificially inflating voting power in certain districts, New Jersey must count prisoners as residents of their home districts, not their prison district. A-659 does just this. New Jersey will be in good company by ending its practice of prison-based gerrymandering. Over the past few years New York, Delaware, Maryland and California have all passed laws requiring their states to count prisoners in their home districts for the purposes of apportionment and redistricting. New Jersey already requires that school districts be drawn without regard to prison populations.¹ It is time to take the logical, and just, next step.

It is important to make clear what this bill does *not* do: this bill does not create voting rights for prisoners, parolees, or probationers, and it does not alter any formula for the allocation of funding; it only corrects the apportionment of our population for redistricting and purposes.

The ACLU of New Jersey believes the best way to promote a true participatory democracy is to allow prisoners and people serving sentences on parole or probation to vote. After all, if we don't hear the voices of those who struggle most in society, how will we know what to fix? But until that democratic ideal is realized, New Jersey should count prisoners in their home districts as a way to protect the decades-old United States Supreme Court instruction on apportionment: one person, one vote.

We urge the Committee to support A-659.

¹ *N.J.S.A. 18A:13-8; Bd. of Educ. v. N.J. State Bd. of Educ.*, 372 *N.J. Super.* 341 (2004).