Prison inmates at issue in redrawing political districts

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The U.S. Census Bureau has always counted inmates where they are incarcerated, rather than where they last lived. But because the nation’s prison population has swelled, states are being urged to abandon a practice that critics call “prison-based gerrymandering.”

Lobbyists from public interest groups maintain that the common practice gives residents of legislative and local political districts where non-voting prisoners are housed more power at the polls than other voters, particularly those in the urban minority neighborhoods where inmates disproportionately come from.

Last year, New York, Maryland and Delaware passed laws to correct the possible violation of the one person, one vote principle and adjust census data, which the states are using in redrawing legislative districts based on the 2010 Census.

The NAACP-Legal Defense and Educational Fund, Common Cause and the American Civil Liberties Union have been involved in the national lobbying effort.

In Massachusetts, the Legislature cannot adopt similar legislation without amending the state constitution, the only one in the country that indisputably requires the census be used in state redistricting.

Still, activists have figured out creative strategies to limit the distortion of voting power and are lobbying the Special Joint Committee on Redistricting to embrace them.

The key to their strategies is the limited flexibility that the U.S. Supreme Court allows in how many people live in each district. That number can vary as much as 5 percent above or below what would be an exactly equal amount in every district.

Two activists have urged the redistricting committee to give legislative districts with prisons up to 5 percent more residents, and those districts where many prisoners last lived up to 5 percent

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The Supreme Court's decision in Reed v. Reed in 1971 established that sex cannot be a factor in the redistricting process. This precedent has had significant implications for the way districts are drawn and has been the subject of ongoing legal battles and reforms. In response to the Supreme Court's ruling, states and local governments have implemented various strategies to ensure that redistricting is done in a way that does not discriminate based on race, sex, or other protected classes. These efforts have included increasing public transparency, allowing for public input, and using objective criteria such as population and geometry in the redistricting process. However, challenges still persist, particularly in ensuring that minority communities are fairly represented and that redistricting does not perpetuate gerrymandering. 

Peter Wagner, director of the Prison Policy Initiative, has been at the forefront of this work. He has advocated for the use of prison populations in redistricting to ensure that these often-overlooked communities are properly represented. In a 2002 paper, Wagner established that prison populations do not accurately reflect the population of a region and should not be used to draw districts. His work has helped to raise awareness about the importance of inclusive and fair redistricting practices.