

PRISON GERRYMANDERING IN MICHIGAN: IMPACTS & POSSIBLE SOLUTIONS

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I. INTRODUCTION

Danny Jones, a Detroit native, was incarcerated in a prison in Ionia, Michigan in 2000.¹ In a 2021 op-ed for *The Detroit News*, Jones recounted

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1. See *Prison Gerrymandering Is Harming Black Communities in Michigan. Our State's Redistricting Commission Can Change That This Year*, CAMPAIGN LEGAL CTR. (Sep. 15, 2021), <https://campaignlegal.org/story/prison-gerrymandering-harming-black-communities-michigan-our-states-redistricting-commission> [<https://perma.cc/Y434-RGV M>].

how officers passed around census forms to all the people incarcerated in the prison.² As he was filling out the form, another person who was incarcerated instructed him to not fill it out because the county was trying to count them as residents to benefit Ionia.³ Jones, who was incarcerated over 130 miles from his hometown of Detroit, tore up the paper because he did not want Ionia to be able to benefit from his incarceration at the expense of his real community—Detroit.⁴ He knew that tearing up that form was only a temporary solution, so after finishing his sentence Jones began working to abolish the process known as prison gerrymandering.⁵

This Note explores the topic of prison gerrymandering as it relates to districting in the state of Michigan. First, this Note provides background information on the constitutional requirements for creating state voting districts.⁶ Then, this Note describes current laws concerning felon voting rights⁷ and how they relate to the phenomenon known as prison gerrymandering.⁸ Specifically, it delves into the impact prison gerrymandering has on the State of Michigan, especially as it relates to Michigan's new redistricting scheme.⁹

After providing the background on prison gerrymandering and the impact it has in Michigan, this Note argues that steps need to be taken to rectify prison gerrymandering because it fundamentally violates constitutional principles of districting.¹⁰ This Note next explores potential solutions and evaluates their effectiveness.¹¹ Finally, this Note argues that changing voting requirements through state legislation is the most effective and efficient solution to address the challenges posed by prison gerrymandering.

II. BACKGROUND

A. The One Person, One Vote Standard

During the Reconstruction Era, the states ratified the Thirteenth, Fourteenth, and Fifteenth Amendments.¹² The Fourteenth Amendment

2. *See id.*

3. *See id.*

4. *See id.*

5. *See id.*

6. *See infra* Part II.A.

7. *See infra* Part II.B.

8. *See infra* Part II.C.

9. *See infra* Part II.D.

10. *See infra* Part III.

11. *See infra* Part III.C.

12. *The Reconstruction Amendments*, NAT'L CONST. CTR., <https://constitutioncenter>

guarantees due process by prohibiting states from enforcing any law that denies the privileges and immunities afforded by citizenship.¹³ This amendment also guarantees equal protection of the laws for all citizens.¹⁴ Finally, the Fourteenth Amendment's second clause guarantees apportionment of representatives.¹⁵ This clause is the basis for what has come to be known as the "one person, one vote" standard.¹⁶ "One person, one vote" refers to the requirement that a person's vote be equal to that of another person's vote.¹⁷ Although this standard is limited, it protects votes from being diluted or debased.¹⁸

In *Baker v. Carr*, the Court considered whether Tennessee's redistricting process violated the Fourteenth Amendment's guarantee of equal protection by not sufficiently ensuring the districts were approximately equal.¹⁹ The Supreme Court held that the question of whether Tennessee's redistricting process resulted in approximately equal districts did not present a nonjusticiable political question and that the complaint fell within "reach of judicial protection under the Fourteenth Amendment."²⁰ By holding that questions of legislative apportionment were within reach of the protections provided by the Fourteenth Amendment, the Court opened the door to further challenges on the basis of vote dilution.

Subsequently, the Supreme Court in *Reynolds v. Sims* held that the Equal Protection Clause guarantees equal representation.²¹ The Court established that representation must be apportioned based on population and that unequal representation constitutes a violation of the Equal Protection Clause of the Fourteenth Amendment.²² In this case, plaintiffs alleged that Alabama's failure to reapportion its districts decennially violated the plaintiffs' guarantee of equal protection under the Fourteenth Amendment.²³ The Court explained that "an individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a

.org/learn/educational-resources/historical-documents/the-reconstruction-amendments [https://perma.cc/N3SL-72JF]; U.S. CONST. amend. XIII, XIV, XV.

13. U.S. CONST. amend. XIV.

14. *Id.*

15. *Id.*

16. 16B C.J.S. Constitutional Law § 1428 (2021).

17. *Id.*

18. *Id.* ("In other words, the right to vote is protected by the U.S. Constitution against dilution or debasement.")

19. *See Baker v. Carr*, 369 U.S. 186, 187 (1962).

20. *Id.*

21. *Reynolds v. Sims*, 377 U.S. 533, 568 (1964).

22. *Id.*

23. *Id.* at 540.

substantial fashion diluted when compared with votes of citizens living on other parts of the State.”²⁴

Essentially, the one-person, one-vote standard requires that citizens have relatively equal voting power.²⁵ A redistricting scheme that disproportionately distributes voting power violates the one-person, one-vote standard.²⁶

B. Felon Disenfranchisement

1. General Overview

Article One of the Constitution provides considerable deference to the states in running their own elections.²⁷ States are allowed to establish their own requirements for registering to vote as long as they are in accordance with federal law.²⁸ The federal government has prohibited voter discrimination for protected groups; however, “people convicted of a crime” is not considered a protected class.²⁹ Rather, courts have upheld laws preventing people from voting due to a criminal conviction under Section Two of the Fourteenth Amendment.³⁰ In *Richardson v. Ramirez*, the Supreme Court held that California’s law prohibiting convicted felons from voting was constitutional.³¹ In coming to this conclusion, the Court stated that the language of Section Two of the Fourteenth Amendment was controlling in considering whether felon disenfranchisement was constitutional.³² With few exceptions, other courts have interpreted *Richardson* as an essential prohibition on constitutional challenges to felon disenfranchisement.³³

24. *Id.*

25. *See generally id.*

26. *See Reynolds*, 377 U.S. at 568.

27. U.S. CONST. art. I, § 4, cl. 1 (“The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.”).

28. *Id.*

29. Voting Rights Act, 52 U.S.C. §10302.

30. *Richardson v. Ramirez*, 418 U.S. 24 (1974).

31. *Id.* at 56.

32. *Id.* at 54.

33. Ludovic Blain III, *One Person, No Vote: The Laws of Felon Disenfranchisement*, 115 HARV. L. REV. 1939, 1950 (2002); *see, e.g.*, *Hunter v. Underwood*, 471 U.S. 222 (1985) (providing an example of an exception to this prohibition on constitutional challenges). In *Hunter v. Underwood*, Alabama’s felon disenfranchisement scheme was struck down as unconstitutional. *Id.* A section of Alabama’s Constitution, Art. VIII § 182, disenfranchised persons convicted of crimes involving moral turpitude. *Id.* The Court found that the Alabama constitution disenfranchisement provision was enacted with the

These cases have resulted in a variety of state laws regarding voter eligibility restrictions due to a previous criminal conviction.³⁴ As of 2022, twenty-two states prohibit voting while serving time in prison; fifteen prohibit voting while in prison or on parole or probation; eleven states prohibit voting while serving time and at least some time after post-sentence, and two states, along with Washington, D.C. and Puerto Rico, have no restrictions.³⁵

2. Felon Voting Laws in the State of Michigan

Voter eligibility requirements in Michigan can be found in the state's Constitution.³⁶ Article II, Section Two allows persons to be excluded from the electorate "because of mental incompetence or commitment to a jail or penal institution."³⁷ Although this Section permits state laws that prevent people who are imprisoned or mentally disabled from voting, Article II, Section Two does not *require* such an exclusion.³⁸ Currently in Michigan, people who are convicted of a crime and serving time in prison are unable to vote during the time of their confinement.³⁹ Once they are released from prison, they are able to vote.⁴⁰

C. Prison Gerrymandering

1. Census Bureau

The Census Bureau is a federal agency within the Department of Commerce.⁴¹ Its purpose is to conduct the decennial census in order to guide districting as spelled out in Article 1, Section 2 of the Constitution⁴²

intent of depriving Black People of the right to vote. *Id.* Therefore, the Court held that this disenfranchisement was unconstitutional under the Fourteenth Amendment. *Id.*

34. Jean Chung, *Voting Rights in the Era of Mass Incarceration: A Primer*, SENTENCING PROJECT (July 28, 2021), <https://www.sentencingproject.org/publications/felony-disenfranchisement-a-primer/> [<https://perma.cc/DGW4-LKR8>].

35. *Id.*; CHRISTOPHER UGGEN ET AL., SENTENCING PROJECT, LOCKED OUT 2022: ESTIMATES OF PEOPLE DENIED VOTING RIGHTS (2022).

36. MICH. CONST. art. II (1963).

37. MICH. CONST. art. II, § 2 (1963).

38. *Id.*

39. *Can Michigan Residents in Jail or Prison Still Vote?*, MICH. SEC'Y OF STATE, https://www.michigan.gov/sos/0,4670,7-127-5647_12539_29836-202492--,00.html [<https://perma.cc/8FP3-YXBJ>] (last visited Jan. 24, 2022); MICH. COMP. LAWS ANN. § 168.758b.

40. *Id.*

41. 13 U.S.C.A. § Refs & Annos.

42. *U.S. Census Bureau Finalizes 2020 Census Residence Criteria and Situations*, U.S. CENSUS BUREAU (Feb. 7, 2018), <https://www.census.gov/newsroom/press-releases/2018/>

and is guided by Title 13 of the United States Code.⁴³ Subsequent legislation guiding the Census Bureau has allowed the Census Bureau more latitude in conducting the decennial census.⁴⁴

The decennial census consists of a population (and household) count.⁴⁵ Apportionment of state and local voting districts are drawn based upon the decennial census conducted by the U.S. Census Bureau.⁴⁶ In addition to drawing electoral districts, this population is used to distribute billions of dollars in federal funding.⁴⁷

When counting households, the Census Bureau applies the “usual residence rule.”⁴⁸ The usual-residence rule states that people’s residences are where they reside and sleep a majority of the time.⁴⁹ The usual-residence rule categorizes incarcerated people as residents of their prison since that is where they reside and sleep all of the time.⁵⁰ The result of this rule is that incarcerated people are counted as residents of the community in which their prison exists, even though most incarcerated persons do not have ties to the community nor plan to remain in that community after serving their sentence.⁵¹

Before every census, the Census Bureau reviews these policies, including the usual-residence rule, to ensure that people are counted only

residence-criteria.html [https://perma.cc/AFT3-RZR9]; U.S. CONST. art. I, § 2.

43. *Our Authority*, U.S. CENSUS BUREAU, (Dec. 16, 2021) <https://www.census.gov/about/authority.html#:~:text=The%20Census%20Bureau%20is%20bound,collect%20from%20individuals%20and%20businesses> [https://perma.cc/WHG8-DDNM].

44. *Id.*

45. *U.S. Census Bureau at a Glance*, U.S. CENSUS BUREAU (June 2021), <https://www2.census.gov/about/census-at-a-glance.pdf> [https://perma.cc/2R77-STX5].

46. *About the 2020 Census*, U.S. CENSUS BUREAU (Oct. 8, 2021), <https://www.census.gov/programs-surveys/decennial-census/decade/2020/about.html> [https://perma.cc/F9C9-X7KS].

47. *Id.*

48. *Id.*

49. *2020 Census Residence Criteria and Residence Situations*, U.S. CENSUS BUREAU, https://www2.census.gov/programs-surveys/decennial/2020/program-management/memo-series/2020-memo-2018_04-appendix.pdf [https://perma.cc/38CJ-XNK4] (last visited Jan. 24, 2022).

50. People in correctional facilities have been, and will continue to be, counted in their location (jail or prison) on census day. *How Does the U.S. Census Bureau Count People Who Have More than One Address?*, POPULATION REFERENCE BUREAU, (Oct. 28, 2019), <https://www.prb.org/resources/how-does-the-u-s-census-bureau-count-people-who-have-more-than-one-address/> [https://perma.cc/Y8EJ-MM3R].

51. *Id.*; They do so even though incarcerated constituents—with very limited exceptions—cannot vote and generally do not have roots or futures in the prison’s host community. Most prisoners are in effect “ghost constituents,” whose interests can be ignored by their representatives with little fear of electoral repercussion. Michael Skocpol, *The Emerging Constitutional Law of Prison Gerrymandering*, 69 STAN. L. REV. 1473, 1475 (2017).

once and in the correct place.⁵² In 2018, the Bureau announced that it would not change the way it counted people who are incarcerated.⁵³ This meant that it would continue to count people who are incarcerated as residents of their place of incarceration.⁵⁴ The Census Bureau has, however, emphasized that states are responsible for redistricting.⁵⁵ Since the states are responsible for redistricting, the Bureau agreed to publish raw data that the states can subsequently use to recount prison populations as residents of their last known address for drawing districts.⁵⁶

2. Population Shifting

Although people who are incarcerated cannot vote in a majority of states,⁵⁷ most states still treat them as residents when it comes to drawing electoral districts.⁵⁸ This results in large blocks of non-voters being counted as residents of the community in which they are incarcerated.⁵⁹ Communities with prisons experience a boost in population, yet the number of voters does not change.⁶⁰

It is important to note that prisons tend to be in rural areas, despite the fact that a majority of people incarcerated are from urban areas.⁶¹ This results in a population shift from urban to rural areas.⁶² Because counting the incarcerated increases the population but not the number of voters, rural communities with prisons experience inflated representation, while urban communities experience deflated representation.⁶³ As Michael Skocpol describes in his article *The Emerging Constitutional Law of Prison Gerrymandering*, it is as if over a million Americans suddenly

52. Memorandum from the U.S. Dep't of Com., Econ. and Stat. Admin., U.S. Census Bureau (Feb. 5, 2018), https://www2.census.gov/programs-surveys/decennial/2020/program-management/memo-series/2020-memo-2018_04.pdf [https://perma.cc/6QHW-8F9K].

53. *Id.*

54. *Id.*

55. 83 F.R. 5525 (Feb. 8, 2018).

56. *Id.*

57. Chung, *supra* note 34.

58. Skocpol, *supra* note 51.

59. *Id.*

60. *Id.*

61. TRACY HULING, BUILDING A PRISON ECONOMY IN RURAL AMERICA (2002), https://www.prisonpolicy.org/scans/huling_chapter.pdf [https://perma.cc/PK42-RLPE] (theorizing that prisons tend to be in rural areas because rural communities suffering from farming and factory losses welcome prisons as potential opportunities for growth).

62. Skocpol, *supra* note 51 (arguing that the result is a subtle shift of political power—an electoral windfall for mostly rural, White, conservative districts at the expense of urban and minority voters with different political preferences).

63. *Id.*

disappeared from their houses only to be found in concentrated blocks in communities far from their homes.⁶⁴

This population shift benefits districts that contain prisons because their elected representatives represent a smaller voter-eligible population as compared to other districts.⁶⁵ The result is that the rural districts containing prisons are saturated while the representation of urban districts with higher proportions of incarcerated individuals is diluted.⁶⁶ Skocpol described the impact of prison gerrymandering:

Because the Constitution requires that states and localities draw legislative districts of roughly equal population, these large concentrations of disenfranchised “residents” exert a sort of representational push and pull: they increase the ostensible population of prisons’ host communities, tugging inward the boundaries of the districts in which they are located.⁶⁷

Recent attention to this disproportionate representation has caused activists to call for reforms to districting schemes and the abolition of prison gerrymandering.⁶⁸ An effective way to abolish prison gerrymandering would be for the Census Bureau to alter the way that it counts prisoners by changing its usual-residence rule.⁶⁹ Many scholars and advocates have supported counting prisoners as residents of their last known address instead of the place in which they are incarcerated.⁷⁰ This solution would correct the disproportionate population shift and would allow for urban populations that have been harmed by prison gerrymandering to regain some of their electoral power while rural populations would lose their padded representation.⁷¹

64. *Id.* at 1475.

65. *Id.* at 1476.

66. *Id.*

67. *Id.*

68. *E.g.*, *Our Work*, RIGHT TO VOTE INITIATIVE, <http://nationalrighttovote.org/our-work/> [<https://perma.cc/6X94-VNN9>] (last visited Oct. 11, 2021) (focusing on voting rights in this era of mass incarceration); *End Prison Gerrymandering*, VOTING ACCESS FOR ALL, <https://votingaccessforall.org/what-we-do/end-prison-gerrymandering/> [<https://perma.cc/X4HE-GGA>] (last visited Oct. 11, 2021) (talking about the harms caused by prison gerrymandering); Chris Uggen et al., *Locked Out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction*, SENTENCING PROJECT (Oct. 30, 2020), <https://www.sentencingproject.org/publications/locked-out-2020-estimates-of-people-denied-voting-rights-due-to-a-felony-conviction/> [<https://perma.cc/78SR-9STG>] (estimating the detrimental effects of felon disenfranchisement on different demographics).

69. Skocpol, *supra* note 51.

70. *See id.*

71. *Prison Gerrymandering Project: Solutions*, PRISON POL’Y INITIATIVE, <https://www>

Despite these calls, the U.S. Census Bureau declined to change its usual residence rule for the 2020 Census, and thus the rule remained in place.⁷² However, the Bureau recently made a significant change which allows states to fix prison gerrymandering if they choose to do so.⁷³ In 2010, the Bureau began publishing “group quarters.”⁷⁴ Group quarters refer to people who are not living in housing units, such as houses or apartments.⁷⁵ Group quarters are further broken down into institutional (including correctional facilities, nursing homes, or psychiatric hospitals) and non-institutional (for example, a college dorm).⁷⁶ Although the Census Bureau is charged with counting the population, states are still responsible for districting.⁷⁷ By publishing the data regarding these group quarters, the Bureau has made it possible for states to reconsider how prison populations are configured into the redistricting process.⁷⁸ For example, ten states passed laws that required their state legislature to utilize the published data from the Census Bureau along with prison population data held by the state to “count” people who are incarcerated as a member of their last address for redistricting purposes.⁷⁹

Some states have taken advantage of this opportunity and passed, or have attempted to pass, measures to correct this malapportionment by recounting prisoners as residents of their last address before their incarceration.⁸⁰ In 2010, New York passed legislation that counted incarcerated persons as residents of their last known address.⁸¹ Since then,

[prisonersofthecensus.org/solutions.html](https://www.prisonersofthecensus.org/solutions.html) [https://perma.cc/D5QB-VKJ4] (last visited Jan. 24, 2022).

72. *U.S. Census Bureau Finalizes 2020 Census Residence Criteria and Situations*, U.S. CENSUS BUREAU (Feb. 8, 2018), <https://www.census.gov/newsroom/press-releases/2018/residence-criteria.html> [https://perma.cc/AFT3-RZR9].

73. Skocpol, *supra* note 51, at 1494.

74. *Id.*; The Census Bureau classifies all people not living in housing units (house, apartment, mobile home, and rented rooms) as living in group quarters. *Group Quarters and Residency Rules for Poverty*, U.S. CENSUS BUREAU (last visited Jan. 24, 2022), <https://www.census.gov/topics/income-poverty/poverty/guidance/group-quarters.html> [https://perma.cc/C7EZ-ZZD5].

75. *Id.*

76. *Id.*

77. See 83 F.R. 5525 (Feb. 8, 2018).

78. *Using the Census Bureau’s PL94-171 Group Quarters Population Table*, PRISON POL’Y INITIATIVE, <https://www.prisonersofthecensus.org/technicalsolutions2020.html> [https://perma.cc/X6EG-AB9H] (last visited Apr. 4, 2022).

79. *Id.*

80. Peter Wagner, *Momentum Is Building*, PRISON POL’Y INITIATIVE (2021), <https://www.prisonpolicy.org/graphs/momentum.html> [https://perma.cc/R9EG-YSKW] (providing a map showing states that have enacted laws combating prison gerrymandering).

81. *Maryland and New York Have Taken the Lead*, PRISON POL’Y INITIATIVE, <https://www.prisonersofthecensus.org/factsheets/national/NY-MD-leading.pdf> [https://

numerous other states have tried to pass similar legislation.⁸² Currently, at least six states have proposed legislation attempting to lessen the impact of prison gerrymandering.⁸³ Additionally, the For the People Act would abolish prison gerrymandering for federal elections.⁸⁴ Most states, including Michigan, do not take the time or effort to recount the data provided by the Census Bureau and change the location of incarcerated persons.⁸⁵

2. Constitutional Challenges to Prison Gerrymandering

In recent years, advocates have mounted challenges to redistricting plans arguing that prison gerrymandering violates the one-person, one-vote standard.⁸⁶ Specifically, three recent cases—*Calvin v. Jefferson County Board of Commissioners*,⁸⁷ *Evenwel v. Abbott*,⁸⁸ and *Davidson v. City of Cranston*⁸⁹—highlight the evolving understanding of the impacts of prison gerrymandering.⁹⁰

A district court decision in Florida, *Calvin v. Jefferson*, strongly opposed prison gerrymandering and rebuked Jefferson County's utilization of the prison population to pad the population of a school board district.⁹¹ The judge indicated that only approximately two-thirds of the population of District Three of Jefferson County was eligible to vote due to the presence of a prison within the boundaries of District Three.⁹² This gave District Three about one-and-a-half times the voting power as the other four districts.⁹³ In declaring this redistricting scheme antithetical to the Equal Protection Clause of the Fourteenth Amendment, the judge unequivocally stated that Jefferson County's districting plan was

perma.cc/79QP-E847] (last accessed Jan. 24, 2022).

82. *Legislation*, PRISON POL'Y INITIATIVE, <https://www.prisonersofthecensus.org/legislation.html> [<https://perma.cc/2WM3-H2D4>] (last accessed Jan. 24, 2022).

83. *Id.*

84. *Id.*; H.R. 1, 116th Cong. (2019–2020).

85. *Id.* (noting that Michigan does not have legislation requiring that people who are incarcerated be counted at their last address although Michigan does have legislation that prevents prison populations from being used to skew county and municipal elections).

86. Skocpol, *supra* note 51 at 1497–98.

87. *Calvin v. Jefferson Cnty. Bd. of Comm'rs*, 172 F. Supp. 3d 1292 (N.D. Fla. 2016).

88. *Davidson v. City of Cranston*, Rhode Island, 837 F.3d 135 (1st Cir. 2016).

89. *Evenwel v. Abbott*, 578 U.S. 54 (2016).

90. Skocpol, *supra* note 51, at 1497–98 (discussing the holdings of these three cases, the variances in them, and what they mean for the future of constitutional claims regarding prison gerrymandering).

91. *Calvin*, 172 F. Supp. 3d 1292.

92. *Id.*

93. *Id.* at 1324.

unconstitutional.⁹⁴ Despite this judge's disdain for the utilization of the prison population for representation padding, other courts have been less willing make a similar finding.⁹⁵

The Supreme Court has weighed in on this issue, albeit in a narrow holding.⁹⁶ In *Evenwel v. Abbott*, the Court held that equal representation could be based on total population rather than the voter eligible population.⁹⁷ Although they held that districts can be based on total population and need not be based on voter-eligible population, the Court kept their decision narrow and declined to comment on whether states *may* draw districts based on voter-eligible population instead of total population.⁹⁸ This decision indicates that although a state is not required to take voter-eligible population into account, the state may be able to do so at its own choosing.⁹⁹ Despite upholding Texas' redistricting plans, the Court did not specifically address prison gerrymandering and its constitutionality.¹⁰⁰

Subsequently, the U.S. Court of Appeals for the First Circuit in *Davidson v. City of Cranston* held that *Evenwel* provided sufficient signals that prison gerrymandering was constitutional and declined to follow the holding articulated by the court in *Calvin*.¹⁰¹ Still, some scholars, including Skocpol, argue that *Evenwel* protects representational equality and may still be grounds for challenging prison-gerrymandering schemes.¹⁰²

In his article, Skocpol presents a framework for litigators and courts to use in future claims regarding prison gerrymandering as violating the Equal Protection Clause.¹⁰³ To explain this theory, he relies on voting rights scholar, Pamela Karlan, to explain the right to vote.¹⁰⁴ She argues that the right to vote falls into three distinct rights: participation, aggregation, and governance.¹⁰⁵ Participation refers to an individual's right to physically cast a ballot to choose an elector.¹⁰⁶ Aggregation refers

94. *Id.* at 1295.

95. *See Davidson v. City of Cranston*, Rhode Island, 837 F.3d 135 (1st Cir. 2016) (declining to following *Calvin*).

96. Skocpol, *supra* note 51, at 1504.

97. *Evenwel v. Abbott*, 578 U.S. 54 (2016) (considering plaintiffs' claims that Texas' districts must be equalized based on voter-population rather than total population).

98. *Id.*

99. *See id.*

100. Skocpol, *supra* note 51.

101. *Davidson v. City of Cranston*, Rhode Island, 837 F.3d 135 (1st Cir. 2016).

102. Skocpol, *supra* note 51 at 1509–11.

103. *Id.* at 1529–36.

104. *Id.* at 1523–29 (discussing Karlan's article); Pamela S. Karlan, *The Right to Vote: Some Pessimism About Formalism*, 71 TEX. L. REV. 1705 (1993).

105. *Id.* at 1524.

106. *Id.*

to the right to fairly elect an elector without the interference of statewide decisions pertaining to electoral structure or gerrymandering.¹⁰⁷ Finally, governance refers to the effectiveness of the representatives in representing the voters' interests.¹⁰⁸ Skocpol proceeds to argue that prison gerrymandering claims fall into the category of "aggregation" rights and require a different approach than would be used for participatory rights.¹⁰⁹

Skocpol argues that the proper test is community-centric.¹¹⁰ He articulates his baseline for this test as follows: "Population data are not a constitutionally permissible one-person, one-vote baseline if they count a discrete group of persons (a) where the government has involuntarily relocated them, (b) where they do not regularly interact with the surrounding community, and (c) where they cannot vote."¹¹¹ The bottom-line of Skocpol's proposed test is that prison gerrymandering claims should not be based on the individual right of the person who is incarcerated to participate; rather, these claims should focus on the impact to the community and the harms incurred on other voters as a result of the incarcerated person's inability to participate.¹¹²

D. Prison Gerrymandering in Michigan

1. Demographics & Prisons in Michigan

As of January 2021, the Michigan Department of Corrections oversees twenty-seven active prisons.¹¹³ These twenty-seven prisons span eighteen of Michigan's eighty-three counties.¹¹⁴ Of these eighteen counties

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.* at 1532.

111. *Id.*

112. *Id.*

113. *Prison Directory*, MICH. DEP'T. OF CORR. https://www.michigan.gov/corrections/0,4551,7-119-68854_1381_1385---,00.html [<https://perma.cc/MC5H-652X>] (last accessed Mar. 7, 2022).

114. *See Mich. Dep't. of Corrs. Corr. Facilities Map*, MICH. DEP'T. OF CORR. (Jan. 11, 2021), https://www.michigan.gov/documents/corrections/MAP_CFA_Regions_January_11_2021_712509_7.pdf [<https://perma.cc/CX3Q-97UD>] (showing that eighteen counties contain correctional facilities. Although the map lists nineteen counties, Wayne County is not being counted because it is a temporary detention center and not prison.); *see Detroit Det. Ctr. (DDC)*, MICH. DEP'T. OF CORR. https://www.michigan.gov/corrections/0,4551,7-119-68854_1381_1385-354404,00.html [<https://perma.cc/6BEM-D7DJ>] (last accessed Mar. 7, 2022) (explaining that the Detroit Detention Center does not hold people for more than seventy-two hours). The Detroit Detention Center should not be considered in this analysis because people are only held there pre-arraignment and detained there for up to

containing prisons, only six have populations over 100,000 people.¹¹⁵ Based on the 2020 Census, incarcerated people accounted for at least ten percent of the county population in four counties in Michigan.¹¹⁶ These counties are Chippewa, Ionia, Alger, and Baraga.¹¹⁷ Three of these counties are in the largely rural Upper Peninsula of Michigan,¹¹⁸ and all four counties are largely White.¹¹⁹ Prison populations of three additional counties in Michigan make up more than 5% of the county population.¹²⁰ These counties include Lake, Gratiot, and Montcalm.¹²¹ Again, all three of these counties are largely made up of White residents.¹²²

Clustering prisons in rural areas is not unique to Michigan as evidenced by Tracy Huling's article *Invisible Punishment: The Collateral*

seventy-two hours. In Michigan, people imprisoned lose the right to vote. See *Can Michigan Residents*, *supra* note 39; MICH. COMP. LAWS ANN. § 168.758b.

115. *Michigan Counties by Population*, MICH. DEMOGRAPHICS (2021), https://www.michigan-demographics.com/counties_by_population [<https://perma.cc/ARP2-XN9A>].

116. *There Are Fewer People Behind Bars Now than 10 Years Ago. Will it Last?*, MARSHALL PROJECT (Sep. 27, 2021), <https://www.themarshallproject.org/2021/09/20/there-are-fewer-people-behind-bars-now-than-10-years-ago-will-it-last> [<https://perma.cc/TPV7-2N79>].

117. *Id.*

118. *Id.*

119. The four counties with large prison populations have demographics that are largely White. The state of Michigan is 79.2% White and 14.1% Black. *Quick Facts: Alger County, Michigan; Baraga County, Michigan; Ionia County, Michigan; Chippewa County, Michigan; Wayne County, Michigan; Michigan*, U.S. CENSUS BUREAU (July 1, 2021), <https://www.census.gov/quickfacts/fact/table/algercountymichigan,baragacountymichigan,ioniacountymichigan,chippewacountymichigan,waynecountymichigan,MI/PST045221> [<https://perma.cc/Z6K5-TFPB>]. In comparison, Alger County is 84.7% White and 7.3% Black. *Id.* Baraga County is 72.7% White and 8.0% Black, Ionia County is 92.3% White and 4.8% Black, Chippewa County is 70.5% White and 7.0% Black. *Id.* It should be noted that these estimates are based on census data that, as previously stated, count prison populations of the communities in which they exist. Wayne County, however, is much more diverse and reports demographics of 54.6% White and 38.7% Black. *Id.*

120. *Id.*

121. *Id.*

122. These three counties are largely White. Gratiot County is 91.1% White and 6.2% Black. *Quick Facts: Gratiot County, Michigan; Montcalm County, Michigan; Lake County, Michigan; Wayne County, Michigan; Michigan*, U.S. CENSUS BUREAU (July 1, 2021), <https://www.census.gov/quickfacts/fact/table/gratiotcountymichigan,montcalmcountymichigan,lakecountymichigan,waynecountymichigan,MI/PST045221> [<https://perma.cc/CL2R-AKCF>]. Montcalm County is 94.8% White and 2.5% Black, and Lake County is 87.9% White and 8.0% Black. *Id.* It should be noted that these estimates are based on census data that, as previously stated, count prison populations of the communities in which they exist. Wayne County, however, is much more diverse and reports demographics of 54.6% White and 38.7% Black. *Id.*

Consequences of Mass Imprisonment.¹²³ In this article, the author uses Ionia as an example of a prison town.¹²⁴ Ionia, which contains four of Michigan's current prisons, exemplifies how prisons tend to be clustered in one area.¹²⁵

While prisons tend to be built in rural areas, people who are incarcerated are more likely to come from urban areas.¹²⁶ In October 2021, the *Detroit Free Press* reported on the impact of prison gerrymandering in Michigan, noting that Wayne County sentenced nearly one-third of incarcerated persons in Michigan.¹²⁷ Wayne County, which accounts for 18% of Michigan's population, has just one correctional facility.¹²⁸ This facility only detains people who have not yet been arraigned and holds them for up to seventy-two hours.¹²⁹ This means that all incarcerated persons who were sentenced in Wayne County are serving their time in a different county than where they committed the crime.

Because prisons tend to be in rural areas while people incarcerated tend to come from urban areas, the result is a population shift from urban to rural areas.¹³⁰ In 2010, the Prison Gerrymandering Project reported the impact that this population shift had on districting in Michigan: four Michigan Senate and five Michigan House districts drawn following the 2000 Census met only the federal minimum population requirements because they claimed people who were incarcerated as residents.¹³¹

The Prison Gerrymandering Project also published data on the impact prison gerrymandering had at the county level based on the 2000 Census.¹³² It reported that the following counties experienced the greatest

123. "The tendency of states—including Texas, Arizona, New York, Pennsylvania, Illinois, Michigan, Colorado, Florida, and California, among many others—to 'cluster' prisons in distinct rural regions has created dozens of rural penal colonies where prisons dominate the community's economic, social, political, and cultural landscape with myriad and profound effects." See HULING, *supra* note 61.

124. *Id.*

125. See *Mich. Dep't. of Corrs. Corr. Facilities Map*, *supra* note 114.

126. *Id.*

127. Miriam Marini, *Advocates Push for Inmates to Be Counted at Their Home Addresses as Redistricting Ensues*, DETROIT FREE PRESS (Oct. 2, 2021, 6:00 AM), <https://www.freep.com/story/news/local/michigan/2021/10/02/advocates-push-end-prison-gerrymandering-falls-deaf-ears/5904529001/> [<https://perma.cc/9EZB-W23E>].

128. *Id.*

129. *Id.*

130. Skocpol, *supra* note 51.

131. *Fixing Prison-Based Gerrymandering After the 2010 Census: Michigan*, PRISON POL'Y INITIATIVE (Mar. 2010), <https://www.prisonersofthecensus.org/50states/MI.html> [<https://perma.cc/PCL6-QXP2>].

132. *How Census Bureau Counts Prisoners Undercounts Michigan's Cities*, PRISON POL'Y INITIATIVE (Apr. 5, 2004), <https://www.prisonersofthecensus.org/news/2004/04/05>

population loss: Wayne, Kent, Genesee, Oakland, Ingham, and Berrien.¹³³ The study estimated that Wayne County experienced a population loss of almost 10,000 people.¹³⁴ Meanwhile, smaller and more rural counties were disproportionately impacted by an increase in population—this study estimated that twelve to thirteen percent of the population of Chippewa and Luce County are incarcerated.¹³⁵ The same study reported that Chippewa, Ionia, and Jackson counties gained over 4,000 residents by counting prison populations.¹³⁶

Although prison gerrymandering impacts state and federal districts, Michigan has prohibited prison gerrymandering at the county and municipal levels.¹³⁷ Regarding apportionment of county boards of commissioners, Michigan legislation excludes non-voters from the population count for districting purposes.¹³⁸ MCLA 46.404(g) specifically prevents counting people who are ineligible to vote as part of the population for the purpose of county districts.¹³⁹ Michigan has similar legislation for municipalities.¹⁴⁰ MCLA 117.27a describes the apportionment of wards for the purpose of nominating a local legislative body. Section Five has a similar prohibition to that of MCLA 46.404(g), preventing those ineligible to vote from being counted as part of the population for municipal districting.¹⁴¹

There has been a push for Michigan to end prison gerrymandering at the state level.¹⁴² In 2021, State Senator Sylvia Santana and State

/michigan/ [<https://perma.cc/3VSK-25ZA>] (showing a map of Michigan counties that lose and gain population due to the way the census counts prison populations).

133. *Id.*

134. *Id.* For purposes of this analysis, the Detroit Detention Center has not been counted since it does not house people who are in prison and only holds people for seventy-two hours pre-arraignment.

135. *Id.*

136. *Id.*

137. *Id.*

138. MICH. COMP. LAWS ANN. § 46.404(g).

139. “Residents of state institutions who cannot by law register in the county as electors shall be excluded from any consideration of representation.” *Id.*

140. MICH. COMP. LAWS ANN. § 117.27a(5).

141. “Residents of state institutions who cannot by law register in the city as electors shall be excluded from population computations where the number of such persons is identifiable in the census figures available.” *Id.*

142. Warren C. Evans, *Opinion: It’s Time to End “Prison Gerrymandering” in Michigan*, BRIDGE DETROIT (Jan. 10, 2022), <https://www.bridgedetroit.com/opinion-its-time-to-end-prison-gerrymandering-in-michigan/> [<https://perma.cc/JC3A-VXF7>] (arguing that Michigan should end prison gerrymandering because such redistricting practices have historically benefited predominantly white and rural communities); *Prison Gerrymandering Is Harming Black Communities*, *supra* note 1 (arguing that prison gerrymandering distorts democracy by telling the story of Danny Jones who is from Detroit and was previously incarcerated in Ionia).

Representative Sarah Anthony proposed a bill to end prison gerrymandering by adjusting the census data to count prisoners as residents of their last known address.¹⁴³ This bill was referred to the Committee on Judiciary and Public Safety on February 18, 2021, but has not moved past committee.¹⁴⁴

2. 2020 Census & Redistricting in Michigan

In 2018, Michigan passed Proposal 18-2, which amended the state constitution to establish a commission of citizens to draw the districting maps.¹⁴⁵ The purpose of this proposal was to lessen the impact of partisan gerrymandering and to prevent the legislative body from being able to choose its own electors.¹⁴⁶ After months of public hearings and map drafts, the commission settled on final map proposals for districts for Congress, the State House, and the State Senate.¹⁴⁷

Previously, Michigan counted prisoners as residents of the community in which they were incarcerated.¹⁴⁸ Activists called upon the commission to end prison gerrymandering by counting incarcerated people as residents of their last known address.¹⁴⁹ These requests did not make much progress, and calls on the Attorney General to weigh in also fell flat.¹⁵⁰ Advocates

143. *Sen. Santana, Rep. Anthony Introduce Bills to End Prison Gerrymandering*, SYLVIA SANTANA STATE SENATOR (Feb. 18, 2021), <https://senatedems.com/santana/news/2021/02/19/sen-santana-rep-anthony-introduce-bills-to-end-prison-gerrymandering/> [<https://perma.cc/6J9K-GDQF>].

144. S.B. 0151 (2021), [http://www.legislature.mi.gov/\(S\(rcncgpth3nqxhzujovdtyuda\)\)/mileg.aspx?page=GetObject&objectname=2021-SB-0151](http://www.legislature.mi.gov/(S(rcncgpth3nqxhzujovdtyuda))/mileg.aspx?page=GetObject&objectname=2021-SB-0151) [<https://perma.cc/4FAW-9JNF>] (showing that Sen. Santana's senate bill has been referred to the Committee on Judiciary and Public Safety); H.B. 4276 (2021), [http://www.legislature.mi.gov/\(S\(wco0bbhthmeabgghbqvvgz0c\)\)/mileg.aspx?page=GetObject&objectname=2021-HB-4276](http://www.legislature.mi.gov/(S(wco0bbhthmeabgghbqvvgz0c))/mileg.aspx?page=GetObject&objectname=2021-HB-4276) [<https://perma.cc/49RQ-XMDQ>] (showing that Rep. Anthony's house bill has been referred to the Committee on Elections and Ethics).

145. *Michigan Independent Citizens Redistricting Commission: FAQ*, MICHIGAN.GOV (2021), https://www.michigan.gov/micrc/0,10083,7-418-92033_106518---,00.html [<https://perma.cc/H6L8-UUR6>].

146. *We Ended Gerrymandering in Michigan*, VOTERS NOT POLITICIANS, <https://votersnotpoliticians.com/redistricting/> [<https://perma.cc/BRG4-4CY9>] (last visited Jan. 24, 2022) (describing the process of passing Proposal 2 and its impact on Michigan elections and redistricting).

147. *Final Maps*, MICHIGAN.GOV, <https://www.michigan.gov/micrc/mapping-process/final-maps> [<https://perma.cc/N984-W6XS>] (last accessed Mar. 7, 2022) (showing the final maps for congressional, State House, and State Senate redistricting maps. The commission adopted the Chestnut map for Congressional redistricting, the Hickory map for State House redistricting, and Linden map for State Senate redistricting).

148. Marini, *supra* note 127.

149. *Id.*

150. *Id.*

argued that commission members have the discretion to recount people who are incarcerated and urged members to use this discretion.¹⁵¹ This request did not succeed, however, and the commission's final maps do not address the issue of prison gerrymandering.¹⁵²

The final congressional maps drew thirteen congressional districts for the state of Michigan.¹⁵³ Michigan's twenty-seven active prisons spread across eight of these congressional districts: district one, district two, district three, district five, district six, district seven, district eight, and district nine.¹⁵⁴ Meanwhile, nearly one-third of people incarcerated in Michigan were sentenced in Wayne County.¹⁵⁵ Wayne County is spread across congressional districts six, twelve, and thirteen.¹⁵⁶ The only overlap of congressional districts representing Wayne County and containing a prison is district six.¹⁵⁷ District six represents approximately 19% of Wayne County¹⁵⁸ and contains just one prison, whereas sixteen of Michigan's prisons are found in either districts one, two, or three.¹⁵⁹ This means that there is very little overlap between districts representing Wayne County, where a plurality of the people who are incarcerated are sentenced, and districts boosted by prison populations.¹⁶⁰

The redistricting commission also drew maps for the state legislature.¹⁶¹ In the final Michigan House map, the state was split into 110 districts with Michigan's eighteen prisons spread across fifteen districts.¹⁶² Michigan's Senate was split into thirty-eight districts with Michigan's eighteen prisons spread across twelve of the districts.¹⁶³ None of the

151. *Id.*

152. Sergio Martínez-Beltrán, *Critics Say Prisons Give Rural Michigan Towns Unfair Edge in Redistricting*, BRIDGE MICH. (Dec. 17, 2021), <https://www.bridgemi.com/michigan-government/critics-say-prisons-give-rural-michigan-towns-unfair-edge-redistricting> [<https://perma.cc/E7RF-UX88>].

153. *Final Plan Chestnut*, MY DISTRICTING MICH. <https://michigan.mydistricting.com/legdistricting/comments/plan/279/23> [<https://perma.cc/YTT5-W6JB>] (last accessed Mar. 7, 2022).

154. *See id.*

155. Marini, *supra* note 127.

156. *Mapping Data*, MICHIGAN.GOV, <https://www.michigan.gov/micrc/mapping-process/mapping-data> [<https://perma.cc/75RQ-2ZSJ>] (clicked on "MI County Splits for Final Plans" and downloaded files to view county splits).

157. *See id.*

158. *Id.*

159. *Id.*

160. *See id.*

161. *Final Plan Hickory*, MY DISTRICTING MICH. <https://michigan.mydistricting.com/legdistricting/comments/plan/280/23> [<https://perma.cc/LSD3-NT4D>] (last accessed Mar. 7, 2022).

162. *See id.*

163. *Final Plan Linden*, MY DISTRICTING MICH. <https://michigan.mydistricting.com/>

districts that experienced a population boost due to presence of a prison represent Wayne County.¹⁶⁴

III. ANALYSIS

A. The Population Shift Caused by Prison Gerrymandering Results in Detrimental Effects on the Impacted Communities.

Following Skocpol's proposed theory for assessing the constitutionality of prison gerrymandering, the constitutionality should be assessed based on the impact it has on the surrounding community.¹⁶⁵ This impact can be broken down into three main effects: (1) inflation of White rural community representation, (2) debasement of Black urban community representation, and (3) resource and representative shift away from urban communities and towards rural communities.

1. Inflation of White Rural Community Representation

When it comes to prison gerrymandering, there are winners and losers. The winners are communities with prisons because they experience inflated representation due to the population shift resulting from counting incarcerated persons as residents of the community in which they are incarcerated. As previously mentioned, the majority of prisons in Michigan are in overwhelmingly White, rural communities.¹⁶⁶ Therefore, it is the White, rural communities in Michigan that are benefitting from counting prison populations as residents of the community holding the prison.

The counting of incarcerated individuals artificially inflates the population because incarcerated individuals do not have participatory rights. Whether they are part of the community is questionable because when people are released from confinement, they are not required to stay in the community and will likely choose to return to their previous residence.¹⁶⁷ Since these people are not active members of the community, these rural communities are benefitting from counting extra bodies of people who likely have no ties to the community and have not chosen to be there.

legdistricting/comments/plan/281/23 [https://perma.cc/AY2N-7YSS] (last accessed Mar. 7, 2022).

164. *See id.*

165. Skocpol, *supra* note 51.

166. *See supra* notes 113–36 and accompanying text.

167. *See* Skocpol, *supra* note 51.

The impact of this inflated representation is significant. It is not as though these people are scattered among different communities, rather these people are grouped together and concentrated in specific communities. Each prison is essentially a concentrated block of people who have been stripped of their voice, yet their bodies are used to lift up the voices of the White, rural communities in which they are incarcerated. In four White, rural counties in Michigan—Chippewa, Ionia, Alger, and Baraga—10% of the population is in prison.¹⁶⁸ That means that 10% of the people that these counties count as part of their population have no voice but are being used to inflate the representation power of the districts contained in these counties.

As stated before, there are winners and losers when it comes to prison gerrymandering. The losers here are the other communities in Michigan that do not contain prisons because when the voices of some communities are artificially inflated, other communities suffer from the disproportionate representation.

2. Debasement of Black Urban Community Representation

In addition to inflating the representation of rural communities, prison gerrymandering also lowers the representation of urban communities. As previously mentioned, approximately one-third of the prison population in Michigan was sentenced in Wayne County, yet Michigan does not have a single prison in Wayne County meaning that not a single person sentenced in Wayne County is serving his or her sentence there.¹⁶⁹ These statistics show that Wayne County is the most adversely impacted community by prison gerrymandering.

Wayne County is the most populous, accounting for approximately 18% of Michigan's population, and diverse county in Michigan.¹⁷⁰ As

168. See *supra* notes 113–36 and accompanying text.

169. Marini, *supra* note 127. Wayne County has a detention center; however, this center is not for long-term confinement. It is only for pre-conviction detention.

170. *Quick Facts: Wayne County, Michigan; Michigan*, U.S. CENSUS BUREAU (July 1, 2021), <https://www.census.gov/quickfacts/fact/table/waynecountymichigan,MI/PST045221> [<https://perma.cc/UTG4-2EPQ>] (showing Wayne County's population is 54.6% White and 38.7% Black compared to Michigan's total demographics of 79.2% White and 14.1% Black); *Michigan's Population Topped 10 Million in 2020*, U.S. CENSUS BUREAU (Aug. 25, 2021), <https://www.census.gov/library/stories/state-by-state/michigan-population-change-between-census-decade.html> [<https://perma.cc/35RK-F96T>]; Marini, *supra* note 127 (showing the adverse impacts of prison gerrymandering. "In line with a national pattern, Michigan's incarcerated population is disproportionately Black and from urban areas, and the majority of inmates are incarcerated in areas that are white and rural. Advocates are pushing for the commission to act this round of redistricting to reduce the harm on communities of color now, rather than waiting another decade").

previously mentioned, it is estimated that Wayne County loses about 10,000 people in population counts due to being incarcerated and counted as residents of other communities—and many of these people are Black.¹⁷¹ A majority of people in prison in Michigan are Black¹⁷² meaning that it is mostly Black people who have their voices silenced.

Take the example of Danny Jones, a Detroit native who was incarcerated over 130 miles from Detroit in Ionia, Michigan.¹⁷³ Because he was incarcerated, his freedoms were extremely reduced, and he lost his right to vote.¹⁷⁴ Yet, the Ionia community still sought to count him as a member of their population.¹⁷⁵ Not only did Jones' Detroit community lose representation power because he had been transported out of his community, but Ionia was seeking to capitalize on his presence in the county. Although this attempt was unsuccessful because Jones was warned by another incarcerated person to not fill out the census form, Detroit still lost out on the ability to count Jones as well as the others in a similar position to him.

Not only is the increase in population count concentrated to specifically White, rural communities, but the impact of the loss of population is concentrated to diverse, urban communities.

B. The Population Shift Resulting from Prison Gerrymandering in Michigan Violates the One-Person, One-Vote Standard.

Prison gerrymandering causes a shift in population that creates a districting scheme where the weight of one's vote varies from district to district. One-person, one-vote refers to approximate equality in representation among representational districts.¹⁷⁶ The way that Michigan counts prison populations in drawing its legislative districts violates this principle because it shifts population away from urban areas and toward rural districts. Safe and Just Michigan reports that Michigan's prison

171. *How Census Bureau Counts Prisoners Undercounts*, *supra* note 132 (showing a map of Michigan counties that lose and gain population due to the way the census counts prison populations); E. ANN CARSON ET AL., VERA INSTITUTE OF JUSTICE, INCARCERATION TRENDS IN MICHIGAN (2019), <https://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-michigan.pdf> [<https://perma.cc/68M7-6TRX>] (showing that Black people are disproportionately represented in prisons constituting 15% of state population but 53% of prison populations).

172. *Id.*

173. *Prison Gerrymandering Is Harming Black Communities*, *supra* note 1.

174. *See Can Michigan Residents*, *supra* note 39; *see also* MICH. COMP. LAWS ANN. § 168.758b.

175. *Prison Gerrymandering Is Harming Black Communities*, *supra* note 1.

176. 16B C.J.S. Constitutional Law § 1428 (2021); Martínez-Beltrán *supra* note 152.

population as of 2019 exceeds 38,000 people.¹⁷⁷ While this may not seem like a large number, when one breaks it down by county the true effects are shown. This population shift violates the one-person, one-vote standard because it makes it so that the weight of an individual's vote depends on the district in which they reside.

Although the Michigan Constitution allows the state legislature to prevent people who are incarcerated from voting, voting districts must still comply with constitutional requirements—including abiding by the one-person, one-vote standard. The shift of population due to counting people who are incarcerated as residents of the community in which they are incarcerated directly violates this requirement.

C. Proposed Solutions

At the state level, there are two main ways to rectify the ramifications of prison gerrymandering. The first way is that the state can abolish the effects of the Census Bureau's usual residence rule by adjusting the population counts after the fact to count people who are incarcerated at their previous address rather than the place where they are incarcerated. The second is by passing legislation that allows for persons who are incarcerated to vote during their period of incarceration.

1. Census Bureau Reforms

Future Michigan Independent Citizens Redistricting Commissions (MICRC) can change the way in which they count prisons during redistricting by adjusting the Census Bureau's population counts to eliminate the usual residence rule. Michigan can choose to adjust the population data to count people who are incarcerated at their previous address and not as members of the community in which they are incarcerated. Doing this would prevent rural communities containing prisons from benefitting from inflated population numbers leading to disproportionate representation.

Additionally, this policy would prevent communities with higher rates of incarceration from losing population in these important census counts. The current census residency rule harms communities with higher rates of

177. "As of Dec. 31, 2019, the state had 38,053 people incarcerated in the state's prison system, a 1.8 percent dip from where it stood at the end of 2018, but a 26.1 percent drop from 51,515—the highpoint of the state's prison population, reached in 2006." *The Michigan Department of Corrections by the Numbers*, SAFE & JUST MICH. (Mar. 25, 2021), <https://www.safeandjustmi.org/2021/03/25/the-michigan-department-of-corrections-by-the-numbers/#:~:text=31%2C%202019%2C%20the%20state%20had,prison%20population%20reached%20in%202006.> [https://perma.cc/95U5-2UET].

incarceration because it deflates the population. Despite the fact that many people who are incarcerated intend to return to their previous residence after release,¹⁷⁸ they are not counted as members of that community. This results in these communities losing residents in their population counts.

The deflation of population in these important census accounts can have drastic impacts on the community. These census counts are the basis for the distribution of resources and funding,¹⁷⁹ so having a lower population count hurts these communities because it lowers the resources and funding allocated to them.

The main drawback of this solution is that it would not be immediate. Since the maps have already been drawn for the 2020 census, the next time such policies could have effect is after the 2030 census. U.S. House Representatives and Michigan Representatives are elected in even-years for two-year terms, and thus, there will be no fewer than five elections for representatives that would occur before such changes could take effect.¹⁸⁰ Additionally, Michigan Senators are elected for four-year terms in the same year as the gubernatorial election, and thus, there would be no fewer than two Michigan Senate elections that would occur before the changes would be enacted.¹⁸¹ Waiting until 2030 to enact such changes would mean multiple elections with the unjust, disproportionate representation scheme that Michigan currently employs.

178. Skocpol, *supra* note 51.

179. *Why We Conduct the Decennial Census of Population and Housing*, U.S. CENSUS BUREAU (Nov. 23, 2021), <https://www.census.gov/programs-surveys/decennial-census/about/why.html> [<https://perma.cc/L3NA-MZNA>] (discussing the importance of the decennial census and its impacts on distribution of funds and resources among different communities and indicating that the distribution of funds is based on population totals and breakdowns of population by race, sex, age, etc.); MARISA HOTCHKISS & JESSICA PHELAN, U.S. CENSUS BUREAU, *USES OF CENSUS BUREAU DATA IN FEDERAL FUNDS DISTRIBUTION: A NEW DESIGN FOR THE 21ST CENTURY* (2017), <https://www2.census.gov/programs-surveys/decennial/2020/program-management/working-papers/Uses-of-Census-Bureau-Data-in-Federal-Funds-Distribution.pdf> [<https://perma.cc/FFP4-6ADY>] (listing many of the programs that are based on population counts by the Census Bureau. The paper found that 132 programs used Census Bureau data to distribute at least \$675 billion in 2015).

180. *Michigan Representatives*, MICH. HOUSE OF REPRESENTATIVES (last visited Apr. 4, 2022), <https://www.house.mi.gov/AllRepresentatives#:~:text=Legislative%20districts%20are%20drawn%20on,limited%20to%20serving%203%20terms> [<https://perma.cc/8623-QWSP>]; U.S. CONST. art. 1, § 2.

181. *Senate Information*, MICH. STATE SENATE, (last visited Apr. 4, 2022) <https://senate.michigan.gov/senateinfo.html#:~:text=Senate%20Information&text=Senato rs%20are%20elected%20at%20the,following%20the%20November%20general%20elect ion> [<https://perma.cc/5Y7A-62UV>]. JOCELYN BENSON, 2022 MICHIGAN ELECTION DATES 14, https://www.michigan.gov/documents/sos/2022_Election_Dates_Booklet_738675_7.pdf [<https://perma.cc/S77R-PXRZ>].

Additionally, such a change is unlikely to occur based on the outcome of the 2020 redistricting process. The Michigan Independent Redistricting Committee faced numerous calls to end prison gerrymandering, yet they declined to do so.¹⁸² When asked about the possibility of ending prison gerrymandering, the Attorney General declined to provide an opinion.¹⁸³ The lack of change despite the numerous calls for such adjustments gives little hope that the same changes could be achieved in the future.

2. Legislation

The second state-level solution would be to pass legislation that allows people who are incarcerated to vote in elections. Although not as direct a solution as adjusting the way incarcerated people are counted, this policy would still address the disproportionate representation caused by prison gerrymandering. By allowing people who are incarcerated to vote, no longer would non-voting citizens inflate rural communities' populations. It is true that communities with prisons would still benefit from the presence of the prison in that a higher population count would equate to more resources. Despite this, the representation would not be inflated because although people who are incarcerated are not full-fledged participating members of the community, they would still have a vote and their voices heard. Since the population counts would not include concentrated blocks of people whose voices have been silenced, the representation of rural, white communities would not receive disproportionate weight.

The main benefit of this proposal is that it can have immediate effects. Unlike recounting prison populations, legislation allowing incarcerated people to vote would not have to wait until 2030. Instead, this solution could be enacted as soon as possible and would at least lessen the ramifications of prison gerrymandering.

The main drawback of the proposed solution is that it is unlikely to be enacted. Such legislation is unpopular among both Democrats and Republicans.¹⁸⁴ Additionally, people in prison in Michigan face numerous,

182. Marini, *supra* note 127.

183. *Id.*

184. In a poll released by the Hill and Harris X Thursday, 69 percent of registered voters said people who are incarcerated for a felony should not vote. That went up to 89 percent for individuals serving time for terrorism-related crimes. One of the poll's notable findings is that while Republicans were more likely to be against allowing imprisoned felons to vote than Democrats—85 percent and 61 percent, respectively—a majority of both party members were still against the idea; Catherine Kim, *A Majority of Americans Don't Want to Give Imprisoned Felons the Right to Vote*, VOX (May 3, 2019, 2:30 PM), <https://www.vox.com/2019/5/3/18528319/poll-felons-right-to-vote> [https://perma.cc/KD

pressing matters such as the ongoing COVID–19 pandemic.¹⁸⁵ Given the more immediate issues faced by people in prisons, it seems likely that voting rights may fall to the wayside. This lack of support and momentum for such a proposal indicates it is unlikely to succeed.

Additionally, this proposal falls short because it does not rectify the harm incurred on communities with higher rates of incarceration. The communities with high levels of incarceration would still be harmed because they would still lose population due to portions of their population being incarcerated in other communities.

Despite its drawbacks, passing legislation allowing people who are serving prison terms to vote is the most effective solution. Although this proposal would not address the fact that prison communities gain inflated populations due to the presence of prisons, it still corrects the disproportionate representation. By allowing people who are incarcerated to have the right to vote, the prison communities will not experience the inflated representation that they currently experience with prison gerrymandering. Since people would be able to vote while in prison, representation would be proportionate to the population and thus, the one-person, one-vote standard would not be violated.

Additionally, unlike changes to how the census is conducted or how Michigan utilizes the census counts, this solution could be implemented immediately. While changes to the census or how it is used would not be implemented until after the 2030 census, the legislature can change the rules regarding voting requirements at any point.

3. National Level

The problem of prison gerrymandering can also be rectified at the national level. A national-level solution would be for the Census Bureau to deviate from the usual-residence rule. Instead, the Census Bureau could adopt a policy that would count incarcerated people as residents of their last known address. This would rectify the problems caused by prison gerrymandering because it would prevent the population shift from urban to rural communities.

The main benefit of this proposal is that it is nationwide and would prevent prison gerrymandering at a national level. Additionally, this policy would ease the burden on states of ending prison gerrymandering. As it

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185. *Michigan Profile*, PRISON POL'Y INITIATIVE, <https://www.prisonpolicy.org/profiles/MI.html> [<https://perma.cc/5T56-LR9T>] (last visited Jan. 24, 2022) (listing problems faced by people who are incarcerated in Michigan prisons giving Michigan a failing grade for its response to the COVID–19 pandemic in prisons).

stands right now, states can enact their own policies for counting people who are incarcerated. The burden is on the states, however, to utilize the raw data provided by the Census Bureau to adjust their counts accordingly. By lobbying the Census Bureau to adopt a new policy, the states would not have to take the extra steps to eliminate prison gerrymandering.

A major drawback, however, is that this policy cannot be put in place until the next census. The next census will occur in 2030, so this proposal cannot be implemented until at least then. As previously stated, this solution is not as impactful because there are numerous elections that will occur in the next eight years where the disproportionate representation scheme would still be in place.¹⁸⁶

Additionally, this proposal seems unlikely to be enacted because previous calls for a change to the usual-residence rule have fallen short.¹⁸⁷ Part of the reason they have fallen short is because counting incarcerated people as residents of their previously known address requires finding every person's previous address and adjusting the population count accordingly. Although this may be more difficult than just counting incarcerated people as residents of the prison, the benefit of an accurate count certainly outweighs the hardship caused by the complexity of such a policy.

IV. CONCLUSION

When Danny Jones was incarcerated in Ionia, Michigan, his fellow incarcerated persons took it upon themselves to warn him against completing the census form.¹⁸⁸ Despite a desire to be counted as a citizen in the decennial census, Jones did not want to be used as a voiceless body.¹⁸⁹ He now advocates for an end to this practice and for Michigan to implement a solution that would allow for people who are incarcerated to be counted without benefiting their place of incarceration.¹⁹⁰ Others in similar situations to Jones', however, may not be as lucky. Michigan must end the practice of prison gerrymandering to prevent people like Jones from being used as a body to count just because of their status as an inmate.

Prison gerrymandering is hurting the state of Michigan. Its impacts are not just felt by people who are incarcerated. Rather, prison gerrymandering impacts everyone in the state of Michigan. The disproportionate way in which the population is currently counted in

186. *See supra* notes 180–83 and accompanying text.

187. Skocpol, *supra* note 51.

188. *Prison Gerrymandering Is Harming Black Communities*, *supra* note 1.

189. *Id.*

190. *Id.*

Michigan impacts everything from representation to the distribution of resources and funds.

Steps must be taken in order to rectify the harm caused by prison gerrymandering in Michigan. One possible solution is to reform how incarcerated people are counted for the purpose of redistricting. While this would solve the disproportionate representation that the redistricting scheme currently creates, this solution would not take effect until after numerous elections. Another, more immediate solution, would involve passing legislation that would provide people who are incarcerated with the right to vote. Although this remedy would not address the fact that prison communities would still receive a boost in population, it would make the representation scheme proportionate and aligned with the one-person, one-vote standard. Additionally, this remedy could be enacted immediately.