
From: Grimes, David
Sent: Wednesday, October 20, 2021 9:06 AM EDT
To: 'Nicholas Warren'
CC: Kara Gross
Subject: RE: Prison gerrymandering questions

Thanks, Nick!

-DG

David W. Grimes

Staff Director | Democratic Office
Florida House of Representatives
316 The Capitol | (850) 717-5793

From: Nicholas Warren <NWarren@aclufl.org>
Sent: Wednesday, October 20, 2021 9:05 AM
To: Grimes, David <David.Grimes@myfloridahouse.gov>
Cc: Kara Gross <KGross@aclufl.org>
Subject: Prison gerrymandering questions

EXTERNAL EMAIL: This email originated from outside of the Legislature. USE CAUTION when clicking links or opening attachments unless you recognize the sender and know the content is safe.

David,

Here are a few draft questions on prison gerrymandering. This focuses more on the law and practicalities, not the benefits of the policy. Apologies for the delay.

1. Does the Census provide data to allow states to remove the prison population from the redistricting data base? (A: yes)
2. How easy is it to use the Census's own special prison data to remove prison population from the data? (A: very easy, it's like flipping a switch)
3. Does FDOC have information on the home addresses of inmates in its custody? (A: yes)
4. Could the Legislature use the geocoding services referenced in the ESRI contract to reallocate FDOC prisoners to their home communities? (Yes)
5. Are you aware that at least 12 Florida counties – the same counties that would be advantaged by it – have abolished prison gerrymandering and take out the prison population when drawing their own districts?
6. Are you aware that most of those counties have *never* prison gerrymandered, because they have *always* recognized that it is wrong? (i.e. they aren't doing this in response to *Calvin v. Jefferson County*, Mark Walker's 2016 ruling.)
7. What in the plain language of the Florida Constitution, which requires districts be "as nearly equal in population as is practicable," denies the Legislature discretion to make these kinds of adjustments?
 - a. Does the plain text of the Constitution specifically require the Leg to use total unadjusted Census population, regardless of known inaccuracies or changes that might be made to pursue reasonable policy goals?

8. Did the Florida Supreme Court ever specify that "population" in the Florida Constitution means "unadjusted total Census population including prisoners?"

a. (A: no)

9. Didn't the Florida Supreme Court say that the Fair Districts equal-population requirement tracks U.S. Supreme Court caselaw on population equality?

a. (A: yes, in *Apportionment I* in 2012)

10. Did the U.S. Supreme give states the greenlight to use different population data than the unadjusted total Census population?

a. (A: yes, in *Evenwel v. Abbott* (2016), SCOTUS suggests that states have leeway to use total population or something else. In *Burns v. Richardson* (1966), SCOTUS approved using *voter registration* rather than population. SCOTUS has never mandated a single data set be used for redistricting.)

11. If the requirement to use total population is in statute, isn't that the same statute the Legislature repeals and replaces when it enacts a new redistricting plan?

a. (A: yes, it's the definitions section in 8.0001 (congress) and 10.11 (leg)

12. With several prisons closing since April 1, 2020, why does it make sense to continue counting prisoners where we *know for certain* they no longer physically are?

Best,
Nick

Nicholas Warren ([he/him](#)) | Staff Attorney

American Civil Liberties Union of Florida

Direct: (786) 363-1769 | nwarren@aclufl.org | aclufl.org



Florida

Confidentiality Notice: This communication is for use by the intended recipient and contains information that may be privileged, confidential or copyrighted under applicable law. If you are not the intended recipient, you are hereby formally notified that any use, copying or distribution of this communication, in whole or in part, is strictly prohibited. Please advise the sender immediately by reply e-mail and delete this message and any attachments without retaining a copy. This communication does not constitute consent to the use of sender's contact information for direct marketing purposes or for transfers of data to third parties.

Confidentiality Notice: This communication is for use by the intended recipient and contains information that may be privileged, confidential or copyrighted under applicable law. If you are not the intended recipient, you are hereby formally notified that any use, copying or distribution of this communication, in whole or in part, is strictly prohibited. Please advise the sender

immediately by reply e-mail and delete this message and any attachments without retaining a copy. This communication does not constitute consent to the use of sender's contact information for direct marketing purposes or for transfers of data to third parties.