



February 7, 2022

Dear Members of the Committee on State Government and Elections:

Last session we appeared before this Committee when you considered the enabling statute, H 6222 Sub A, for the redistricting commission that passed the plans before you today. In that testimony we emphasized the importance of making the underlying data public, disclosing communication with the consultant made outside of public meetings, a waiting period between the release of the final maps and the final commission vote, and the need to provide a definition of communities of interest, among other things.

Examining the events of the last several months we are not surprised that the commission disappointed in almost every respect. The public was not given the shapefiles for the maps until the final versions were passed. The *Providence Journal* has reported that there were no communications between the consultant and voters in Lincoln, despite Mr. Brace of Election Data Services telling the commission that voters in Lincoln asked to be included in Senate District 22.<sup>1</sup> House and Senate Plans D were voted on the night they were revealed.<sup>2</sup> The Commission spent months asking questions about how to define the meaning of a community of interest.<sup>3</sup>

We raise these issues because as you consider the proposed maps before you, and the other public comments you receive, Common Cause Rhode Island once again wants to emphasize that there is a better way to do this: an independent redistricting commission. We did not raise that before the commission because it was not within their control. You, as the legislature, can do something to fix this process in the future, and we urge you to consider that as you hear testimony about the problems with the maps before you.

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<sup>1</sup> <https://www.providencejournal.com/story/news/politics/2022/01/31/ri-political-scene-much-can-be-at-stake-when-district-lines-shift/6530576001/>

<sup>2</sup> <https://www.providencejournal.com/story/news/politics/2022/01/12/latest-ri-political-redistricting-maps-stir-new-controversies/9193209002/>

<sup>3</sup> <https://upriseri.com/ri-redistricting-woonsocket/>

Our testimony from April 2021 also pointed out that Rhode Island’s legislative districts are among the most partisan gerrymandered in the United States. Partisan gerrymandering distorts our democracy by making it unresponsive and ultimately less accountable. The U.S. Supreme Court ruled in the case of *Rucho v. Common Cause*, No. 18-422, 588 U.S. \_\_\_ (2019) that partisan gerrymandering is non-justiciable under the political question doctrine. However, in his majority opinion, Chief Justice John Roberts wrote, “Our conclusion does not condone excessive partisan gerrymandering. Nor does our conclusion condemn complaints about districting to echo into a void. The States, for example, are actively addressing the issue on a number of fronts.” Unfortunately, not Rhode Island.

In that case the plaintiff’s advocated for the use of a measurement called the efficiency gap as a method for determining if a plan or district has been partisan gerrymandered. The efficiency gap measures, “the number of votes each party wastes in an election to determine whether either party enjoyed a systematic advantage in turning votes into seats.”<sup>4</sup> Just last week, the North Carolina Supreme Court ordered that state’s lines to be redrawn and named the efficiency gap as one of the criteria that must be considered when doing so.<sup>5</sup>

Using Planscore.org Common Cause Rhode Island calculated the efficiency gap for the three plans in this legislation. House Plan D has an efficiency gap of 11% Democratic.<sup>6</sup> Senate Plan C has an efficiency gap of 11.4% Democratic.<sup>7</sup> Congress Plan B has an efficiency gap of 21.8% Democratic.<sup>8</sup> To give you some context, the most partisan gerrymandered state House maps range from +/- 18%. The most partisan gerrymandered state Senate maps range from +/- 22%. And the most partisan gerrymandered Congressional maps range from +/- 25%. These measures, and many others available from Planscore and other platforms such as Dave’s Redistricting, leave no doubt, these plans are Democratic partisan gerrymanders.

Why is this? The plans you have before you value one thing above all else--protecting incumbents of both political parties. That is even though nothing in the enabling statute of the commission, or elsewhere in Rhode Island law, requires you to do so. By ceding this process to the state’s consultant the commission chose to value incumbent protection above all else.

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<sup>4</sup> From, [https://www.brennancenter.org/sites/default/files/legal-work/How\\_the\\_Efficiency\\_Gap\\_Standard\\_Works.pdf](https://www.brennancenter.org/sites/default/files/legal-work/How_the_Efficiency_Gap_Standard_Works.pdf)

<sup>5</sup> <https://appellate.nccourts.org/orders.php?t=PA&court=1&id=397836&pdf=1&a=0&docket=1&dev=1>

<sup>6</sup> <https://planscore.campaignlegal.org/plan.html?20220206T213732.324675177Z>

<sup>7</sup> <https://planscore.campaignlegal.org/plan.html?20220206T213907.619576841Z>

<sup>8</sup> Planscore says that, “Fairness metrics for plans with fewer than seven seats should be interpreted with great caution.” <https://planscore.campaignlegal.org/plan.html?20220206T213314.710201570Z>

Several states used independent commissions, including Michigan where Election Data Services was the consultant. In five states where the reform was most successful (AZ, CA, CO, MI, VA via the court after commission deadlocked) the efficiency gap was 1.4% Democratic. That compares to the average of 16.8% Republican in states where Republican legislatures control the process and 19.4% Democratic in states where Democratic legislatures control the process.<sup>9</sup>

Partisan competitiveness is just one of several values that the commission could have weighed but chose to ignore. Another is compactness. Unlike partisan competitiveness however, compactness is required by the Rhode Island Constitution.

There are many measures of compactness. A common measure is the Reock Score. It is computed by dividing the area of the voting district by the area of the smallest circle that would completely enclose the district. Scores range from a zero, for the least compact, to one, for the most compact. For House Plan D the average district compactness score is 0.380.<sup>10</sup> For Senate Plan D the average district compactness score is 0.401.<sup>11</sup> For Congress B the average district compactness score is 0.353<sup>12</sup>

Compactness scores can be evaluated on a district-by-district basis, and you can view the district-level measures for the plans at the Dave's Redistricting pages mentioned above. Compactness is just one of two criteria mentioned, along with equal population, in the Rhode Island Constitution.<sup>13</sup> Lack of compactness was one of the claims made in the successful 1982 case, *Licht, et al. v. Quattrocchi, et al.*, 449 A. 2d 887.

There are other important factors you must give serious consideration to as well, not the least of which are compliance with the Voting Rights Act and protection of communities of interest. We are concerned that the commission did not sufficiently weigh these important criteria and encourage you to closely review the maps before you decide they are in compliance.

The primary issue the commission did debate was prison gerrymandering, and we are grateful that they took extensive public testimony on the topic. We are disappointed that the commission chose to reassign just 41% of people counted by the Census Bureau at the Adult Correctional Institutions on April 1, 2020, in their proposed maps. Of the 13

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<sup>9</sup> <https://fivethirtyeight.com/features/did-redistricting-commissions-live-up-to-their-promise/>

<sup>10</sup> <https://davesredistricting.org/maps#ratings::2b418f59-1187-4e72-a3b5-346971d11649>

<sup>11</sup> <https://davesredistricting.org/maps#ratings::e415ae9c-3243-4c62-a8d2-4072129064b2>

<sup>12</sup> <https://davesredistricting.org/maps#viewmap::8cdc5996-7e3c-430d-923a-7f479738f448>

<sup>13</sup> Art. VII, Sec. 1 and Art. VIII, Sec. 2 contain identical language requiring districts for the House (Art. VII) and Senate (Art. VIII) be “nearly equal in population and as compact in territory as possible.”

states that have chosen to fix this problem, Rhode Island has decided to do the least. If you are not going to correct that in the legislation before you, Common Cause Rhode Island urges you, the legislature, to take up separate legislation this year to make sure that all people counted at the ACI in the 2030 census are reassigned.

Finally, much has been made in recent days about the language, beginning on page 173 of the legislation, for transitioning the party district committees to the new proposed districts. There was similar language in 2012-H 7209 Sub A as Amended. Legislators who went through this transition in past redistricting cycles have shared that the party chairs have been deferential to the wishes of incumbents when reconstituting the committees. If that is the *de facto* policy, making it the *de jure* policy in legislation would be much more transparent and predictable.

One cause of the incorrect speculation in recent days that this is a new method for transitioning the committees is because it does not appear in the general laws, even though it was in the public law in 2012.<sup>14</sup> As a matter of style we believe that if you choose to preserve this transition language it should be written in such a way that is codified in the general laws.

In recent years we have seen how fragile our democracy is, and how much work we must all do to preserve it in the future. Respecting the will of the voters means creating an electoral process that is responsive to their desires. The legislation before you does not accomplish that goal. We urge you to do better.

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<sup>14</sup> <http://webserver.rilin.state.ri.us/PublicLaws/law12/law12007.htm>