

WHY THE CONGRESSIONAL BLACK CAUCUS MUST REJECT PRIVATE PRISON MONEY

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INTRODUCTION

“We need to declare the era of mass incarceration and oppressive prison sentences over. The time for comprehensive criminal justice reform is now.”

Karen Bass, Chairwoman of the Congressional Black Caucus¹

The fact that the United States incarcerates more people than any other country in the world at a rate higher than any other country in the world is so well-known that it requires no citation. Within the system of mass incarceration, Black people are disproportionately imprisoned at a rate more than five times the rate of whites.² The racial disparity is linked to myriad policy decisions, including strategic under- and over-policing in Black neighborhoods, excessive mandatory minimums for crimes intentionally linked to Black people, and political rhetoric used to denigrate Black culture. In the United States Congress, the 55 legislators of the Congressional Black Caucus (CBC) work to “ensure that African Americans and other marginalized communities in the United States have the opportunity to achieve the American Dream.”³ This commitment extends to ending mass incarceration through the Caucus’ support of “banning private prisons.”⁴ Because private prisons benefit from high rates of imprisonment, leaders in the CBC should reject campaign donations from these for-profit incarceration facilities.

The argument is straightforward: The CBC should not accept political contributions from private prisons because private prisons are opposed to meaningful reform. These for-profit entities use campaign donations to advance their interests, including building mutually beneficial relation-

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1. Karen Bass, *Los Angeles Wave: It's time to end the era of mass incarceration*, REPRESENTATIVE KAREN BASS (July 30, 2015), <https://bass.house.gov/editorial/los-angeles-wave-it's-time-end-era-mass-incarceration>.
2. *See Criminal Justice Fact Sheet*, NAACP (2019), <https://www.naacp.org/criminal-justice-fact-sheet/>.
3. *See About*, CONG. BLACK CAUCUS (2019), <https://cbc.house.gov/about/>.
4. *See Agenda*, CONG. BLACK CAUCUS (2019), <https://cbc.house.gov/about/agenda.htm>.

ships in Congress to the detriment of Black people. CBC members should reject this money to send a clear message against private prisons.

PRIVATE PRISONS IN THE STATUS QUO

The current condition of the American penal system is abhorrent. Those who are incarcerated often experience involuntary isolation, unhealthy living conditions, and substance abuse while in prisons that are overcrowded, underfunded, and lacking in adequate resources.⁵ In East Mississippi Correctional Facility, a for-profit prison run by Management and Training Corporation, employees testified about dangerous conditions, confused lines of oversight, and difficulty in attracting and retaining qualified staff.⁶ These problems greatly reduce the safety and rehabilitative resources available to inmates during their incarceration and complicate their lives after incarceration. Upon release, formerly incarcerated people must live with the trauma of imprisonment and face legalized discrimination affecting their ability to pursue education, gain employment, secure housing, and vote.⁷ These factors contribute to America's extreme recidivism rate of 76.6% (within five years of release).⁸

Despite social harms, for-profit prisons financially benefit from the unacceptable carceral status quo. Private incarceration centers, like all businesses, only make money when there is a demand for their products and services. 27 states and the federal government incarcerate over 100,000 people across private prison facilities.⁹ GEO Group and CoreCivic (formerly Corrections Corporation of America) are the largest operators of private prisons. In 2015, the two businesses claimed \$2.6 billion of the \$5 billion industry.¹⁰

Private prisons have an economic incentive to increase the number of incarcerated people and decrease the wages and training of employees. State and federal governments award contracts to private prisons in order to manage an exceedingly high population of incarcerated people and keep costs low. Many of these contracts "include occupancy requirements mandating that [state and local] governments keep the facilities between 80 and 100 percent full."¹¹ Governments are easily able to fulfill this provision when simultaneously over-broad and narrowly-tailored criminal

5. See Veronica Wicks, *The Impact of Incarceration and Societal Reintegration on Mental Health*, CSUSB ELECTRONIC THESES, PROJECTS, AND DISSERTATIONS, <https://scholarworks.lib.csusb.edu/508>.

6. See Timothy Williams, *Inside a Private Prison: Blood, Suicide and Poorly Paid Guards*, N.Y. TIMES (Apr. 3, 2018), <https://www.nytimes.com/2018/04/03/us/mississippi-private-prison-abuse.html>.

7. See generally THE SENTENCING PROJECT, <https://www.sentencingproject.org/issues/collateral-consequences/>, (last visited April 20, 2019).

8. See MATTHEW R. DUROSE, ET AL., BUREAU OF JUST. STAT., NCJ 244205, RECIDIVISM OF PRISONERS RELEASED IN 30 STATES IN 2005: PATTERNS FROM 2005 TO 2010 - UPDATE (2014).

9. See *Private Prisons in the United States*, THE SENTENCING PROJECT (Aug. 2, 2018), <https://www.sentencingproject.org/publications/private-prisons-united-states/>.

10. See Lauren-Brooke Eisen, *Private prisons are poised for a comeback under Trump. Here's how to reform them.*, VOX (Jan. 13, 2017), <https://www.vox.com/the-big-idea/2017/1/13/14258350/private-prisons-reform-trump-incarceration>.

11. *Id.*

laws are used to mete out harsh punishments to millions of people, often times in the form of long prison sentences. For-profit prisons maintain a competitive edge over government-run prisons by keeping their expenses low. At East Mississippi, prison guards earn less than the \$12 per hour that their publicly-employed counterparts earn and receive less than half the training time state prisons guards receive.¹² As noted above, prisons and their occupants are worse off when employees are unqualified and unprepared, regardless of the prison's profit margin.

Powerful Wall Street investors also profit from an expansive private prison industry. JPMorgan Chase & Co. (JPMorgan), Wells Fargo, BlackRock, and more than 30 other investors each own in excess of one million shares in GEO Group and CoreCivic.¹³ Dozens of banks help finance private prison debt and invest in their future. The two major for-profit prison companies have more than \$2 billion in debt and would likely not be able to continue without the complicity of JPMorgan, Wells Fargo, and BlackRock.¹⁴ The debt arrangements, like loans, allow GEO Group and CoreCivic to maintain real estate investment trust (REIT) status, which is how they avoid paying over \$113 million in taxes.¹⁵ Additionally, the large Wall Street financiers invest heavily in these companies. At the beginning of 2018, JP Morgan, Wells Fargo, and BlackRock held more than 28 million GEO Group and CoreCivic shares valued collectively at \$653,258,000.¹⁶ The intertwined financial partnerships between investors and private prisons expand the amount of support the private prison industry receives, enabling more destruction and depredation. As a result, JPMorgan, Wells Fargo, BlackRock, and others who profit from the success of private prisons stand to lose significantly from prison reform. It is undocumented the extent to which investors actively lobby in favor of private prisons, but the financial motive is clear.

Notwithstanding recent public statements to the contrary, private prisons oppose substantive changes to the prison industry. In 2018, GEO Group, CoreCivic, and Management and Training Corporation applauded the passage of the FIRST STEP Act, a law aimed at reducing recidivism.¹⁷ This is likely because "[t]he law does not appear to be a major threat to the industry, and in fact, the for-profit prison industry will certainly be able to profit from it."¹⁸ Provisions in the legislation will likely result in shifts of revenue from privately-owned prison facilities to "halfway houses" owned by the same companies. For-profit prisons respond differently when their revenue is truly at risk. In 2016, the Obama administration announced reductions in the use of private prisons as the

12. See *Private Prisons in the United States*, *supra* note 9.

13. See *The Million Shares Club & Prison Lenders*, ENLACE (2018), <http://www.enlaceintl.org/million-shares-club>.

14. See *Bankrolling Oppression*, CTR. POPULAR DEMOCRACY 12 (2018), <https://populardemocracy.org/sites/default/files/20180427%20CBOH%20Digital.pdf>

15. See *id.* at 19.

16. See *id.* at 15.

17. See Karl Evers-Hillstrom, *For-profit prisons strongly approve of bipartisan criminal justice reform bill*, OPENSECRETS (Dec. 20, 2018), <https://www.opensecrets.org/news/2018/12/for-profit-prisons-approve-of-bipartisan-criminal-justice-reform/>.

18. *Id.*

federal inmate population was declining.¹⁹ Since the change would dramatically impact their bottom line, CoreCivic and Management and Training Corporation publicly condemned the decision despite the positive social reality of lower incarceration rates.²⁰

PRIVATE PRISON PAC MONEY

Private prisons' decision to donate campaign contributions is simultaneously unsurprising and exceptional. Money plays a substantial role in American democracy. Nearly \$6.5 billion was spent on federal elections in 2016.²¹ The national political apparatus incentivizes corporations to maintain political action committees (PACs) to donate to campaigns. Business PACs comprised more than 75% of the top 20 contributors to candidates in the 2016 election cycle.²² It is unsurprising that private prisons are taking a well-worn path to advantageous policies by organizing PACs and donating money to political campaigns. Conversely, government-owned prisons do not try to influence elections or candidates in this way. The law does not permit PACs to dole out hundreds of thousands of dollars on behalf of state and federal public incarceration facilities. Thus, private prisons are exceptional in their ability to impact the politics of mass incarceration through campaign donations.

PAC contributions are used to affect policy outcomes and/or build relationships.²³ A citizen donates money to a political campaign to help their preferred candidate win and enact policies the citizen favors. Similarly, a business PAC donates money to a campaign to help their preferred candidate win and enact policies the business favors. According to the Center for Responsive Politics, "Individuals and interest groups will give campaign contributions to politicians in the best position to deliver what they're looking for."²⁴ Although the research is inconclusive on the causal link between campaign donations and legislative policy votes, the motivation behind giving contributions is evident. Even if PAC contributions do not immediately result in the adoption of advantageous policies, campaign contributions allow a relationship to develop between the elected official and the private business. In recognition of the slow legislative process, donations from PACs help facilitate long-standing bonds.

19. See Sally Yates, *Phasing Out Our Use of Private Prisons*, U.S. DEP'T JUST. (Aug. 18, 2016), <https://www.justice.gov/archives/opa/blog/phasing-out-our-use-private-prisons>.

20. See *id.*

21. See Niv M. Sultan, *Election 2016: Trump's free media helped keep cost down, but fewer donors provided more of the cash*, OPENSECRETS (Apr. 13, 2017), <https://www.opensecrets.org/news/2017/04/election-2016-trump-fewer-donors-provided-more-of-the-cash/>.

22. See Center for Responsive Politics, *Top PACs*, OPENSECRETS (Nov. 27, 2017), <https://www.opensecrets.org/pacs/toppacs.php?cycle=2016&filter=P&Type=C&pac=B>.

23. See Jake J. Smith, *When Corporations Donate to Candidates, Are They Buying Influence?*, KELLOGG INSIGHT (Sep. 5, 2017), <https://insight.kellogg.northwestern.edu/article/do-corporate-campaign-contributions-buy-influence>.

24. Center for Responsive Politics, *The top 10 things every voter should know about money-in-politics 1*, OPENSECRETS, <https://www.opensecrets.org/resources/dollarocracy/index.php>.

“For those repeat donors, giving is a way of life and a cost of doing business. It’s how you win friends and influence people in Washington.”²⁵

To disassociate themselves from individuals and groups, politicians reject campaign contributions even when the law does not require it. There are countless examples of candidates returning money in order to express a particular position against policies and/or to break political ties. During the 2016 presidential primary, three Republican candidates returned contributions from the president of a white supremacist organization that was cited by the murderer in the Charleston church shooting that took place in 2015.²⁶ Similarly, several Democrats refunded donations from Harvey Weinstein after allegations of sexual abuse came to light.²⁷ Companies, like Enron in 2001, have also seen their funds returned by politicians.²⁸ Candidates are permitted to refuse campaign contributions whenever they like, and often do so to dismiss specific policies and distance themselves from people and companies.

CBC’S WORDS AND DEEDS

Members of the CBC should reject all donations from private prison PACs. The CBC platform emphasizes “Fighting the New Jim Crow.”²⁹ However, its members accept donations from private prisons, who benefit from mass incarceration. In the 2016 election cycle, PACs affiliated with GEO Group, CivicCorp, and Management and Training Corporation donated \$547,646 directly to candidates, including about 13% of the CBC membership.³⁰ There is an obvious hypocrisy in accepting donations from private prisons and advocating to abolish private prisons. CBC members must ensure congruence between their words and deeds.

Like the CBC, a majority of Americans support reforming the current state of imprisonment. The Caucus has historically detailed “sentencing reform” and “increasing rehabilitation” in its criminal justice agenda.³¹ Citizens express similar views. In a 2016 survey, 51% of respondents across the country stated there are too many people in prison, while only 27% said there were the right amount or not enough people in prison.³² A 2018 poll revealed that approximately 85% of voters agree “the main goal of our criminal justice system should be rehabilitating people to become

25. *Id.* at 6.

26. *See id.*

27. *See* Andrew Mayersohn, *Why some campaign contributions get returned*, OPENSECRETS (Oct. 10, 2017), <https://www.opensecrets.org/news/2017/10/returned-contributions/>.

28. *See id.*

29. *See Issues*, CONG. BLACK CAUCUS (2019), <https://cbc.house.gov/issues/issue/?IssueID=14891>.

30. *See Management and Training Corporation*, OPENSECRETS (Jan. 8, 2019), <https://www.opensecrets.org/orgs/recips.php?id=D000027364&cycle=2016>; *GEO Group*, OPENSECRETS (Jan. 8, 2019), <https://www.opensecrets.org/pacs/pacgot.php?cycle=2016&cmte=C00382150>; *CivicCorp*, OPENSECRETS (Jan. 8, 2019), <https://www.opensecrets.org/orgs/recips.php?id=D000021940&cycle=2016>.

31. Cong. Black Caucus, *Year in Review 6* (2015), https://cbc.house.gov/uploadedfiles/2015_cbc_year_in_reviewfinal.pdf.

32. Morning Consult, *National Tracking Poll 2* (2016), https://cdn3.vox-cdn.com/uploads/chorus_asset/file/7052001/160812_topline_Vox_v1_AP.0.pdf.

productive, law-abiding citizens.”³³ This view is shared across the political spectrum for Republicans (79%), Independents (83%), and Democrats (92%).³⁴

Congressional Black Caucus leaders should prioritize people over money to robustly transform the criminal legal system from a tool of white supremacy to a fairer and equity-based resource. Severing the ties between private prison PACs and CBC members on Capitol Hill can lead to severing the ties between mass incarceration and Black communities across the country.

33. Robert Blizzard, Public Opinion Strategies, *National Poll Results* 1 (2018), <https://www.politico.com/f/?id=00000161-2ccc-da2c-a963-efff82be0001>.

34. *See id.*