

BRENNAN CENTER FOR JUSTICE

Memorandum In Support of Senate Bill 6725

The Brennan Center for Justice at NYU School of Law writes in strong support of Senate Bill 6725. The bill represents a welcome effort to correct a distortion of democracy, caused by the way that people in prison are allocated when drawing legislative district lines. Right now, the Census Bureau tallies incarcerated individuals as residents of the towns where they are incarcerated rather than as residents of their home communities. In New York, though, most people are incarcerated far from their home communities, which remain their legal residence. Senate Bill 6725 would charge the Department of Corrections with providing incarcerated persons' place of residence prior to incarceration so that such individuals can be counted as residents of their home communities rather than as residents of their place of incarceration for purposes of state and local redistricting.¹

Equal Representation for Equal Populations

One of the principal values in the apportionment process is ensuring the equal representation of persons whom representatives represent. When districts are built on the backs of prisoners, they pack in individuals who count towards the district size, but who are not permitted to vote, and with few exceptions have no tangible connection to the legal residents of the district. Equal representation is distorted, benefiting the few at the expense of the many.

The distortion is dramatic. Without claiming incarcerated prisoners, seven New York State Senate districts would not meet minimum population requirements and would have to be redrawn. Rural communities are often most impacted by the distortions caused by including prison populations for purposes of drawing legislative, district and ward boundaries. For example, in St. Lawrence County, two small towns, Ogdensburg and Gouverneur, packed in more than 3,000 people in correctional facilities as if they were residents for purposes of redistricting.² As a result, the political power of the residents in those towns was artificially inflated, and the political power of St. Lawrence County residents who did not live near a prison was substantially diluted. To avoid these electoral inequities, at least 13 counties in upstate New York State have already moved to conduct local redistricting without considering their prison populations in the mix.

¹ Senate Bill 6725 pertains only to the drawing of legislative districts and would have no impact on funding formulas and allocations based on census data.

² Prison Policy Initiative, Prisoners of the Census, <http://www.prisonersofthecensus.org/newyork.html>.

Imprisoned Individuals and the Law

In several other respects, New York law already recognizes that people in prison are tied not to their prison locations, but to their home communities. Most directly, Article 2 of the New York State Constitution states that for voting purposes, “no person shall be deemed to have gained or lost a residence . . . while confined in any public prison.” New York courts have also determined that children of parents in custody legally reside where the parents lived before incarceration,³ and that an incarcerated tenant still legally resides where he or she lived before incarceration.⁴ And if people in prison want to seek a divorce, they have to file where they lived before they were incarcerated.⁵ An imprisoned person’s legal interests, it is clear, remain at their last residence — and so that is where they should also be represented.

The Census Bureau’s Significant Step Forward

National momentum is building to reflect persons in prison accurately in their home communities for redistricting. The Census Bureau recently took a significant step in this direction, ensuring that states and counties across the United States would have access to prison population data in time for redistricting. This decision by the Census Bureau is an important first step towards correcting the unjust results of counting people in prison as residents of their place of incarceration. Unfortunately, though, the Census Bureau’s nationwide mandate left it logistically unable to compile the prior addresses of incarcerated populations in time for next year; as a result, the Bureau’s action only gets halfway toward the equality New Yorkers deserve: it lets states know how large prison populations are, but does not identify where their home residence is. Senate Bill 6725 would finish the job.

Senate Bill 6725 will allow jurisdictions to correct the democratic distortion caused by building districts on the backs of individuals with no local connection. We strongly support Senate Bill 6725, and urge that it be promptly considered and passed.

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³ *Westbury Union Free Sch. Dist. v. Amityville Union Free Sch. Dist.*, 431 N.Y.S.2d 641 (N.Y. Sup. Ct. 1980).

⁴ *Chris-Mac Co. v. Johnpoll*, 496 N.Y.S.2d 601 (N.Y. Civ. Ct. 1985).

⁵ *Beckett v. Beckett*, 520 N.Y.S.2d 674 (N.Y. App. Div. 1987).