

PRISON GERRYMANDERING IN ELKHORN, WI

The Supreme Court requires local governments to update their legislative districts once per decade so that each district contains the same population, giving each resident equal representation. For most local governments this redistricting process relies on U.S. Census data and is straight forward. For communities that host large prisons, however, the process can be more complex because the U.S. Census Bureau counts incarcerated people where they are confined, even though a prison is not a residence under Wisconsin residence law.

Problem

The Census Bureau counts people incarcerated at a correctional facility as residents of the prison, so when Elkhorn uses Census data to draw its legislative districts, the Common Council district with the prison in it will have fewer actual Elkhorn residents than the other districts. This means that the county is — albeit unintentionally — giving people who live near the prison more representation on the Elkhorn Common Council, in violation of the constitutional principle of equal representation.

- After the 2010 Census, the Elkhorn Common Council counted 332 people incarcerated at the Walworth County Jail as if they were residents of District 2. (The people at the jail come from all over Walworth County.)
- People incarcerated at the Walworth County Jail account for about 20% of the population of District 2. That effectively gives each group of 80 actual residents in District 2 as much political clout as 100 people in the other districts.

State statute says prison is not a residence

Wisconsin law considers incarcerated people to be residents of their home addresses: a person's residence is determined by "where the person's habitation is fixed, without any present intent to move, and to which, when absent, the person intends to return." (Wis. Stat. § 6.10)

Solutions

In most states, the solution would be simple: use redistricting data that complies with the state's definition of residence. In our research, we've discovered more than 200 county and municipal governments that removed the prison population prior to redistricting. Most of these local governments do so by choice, and a few states even require or encourage this outcome.

In 1981, however, Wisconsin's Attorney General recommended that local governments take the Census' data at face value and not make any adjustments to account for the prison miscount (70 Wis. Op. Atty. Gen. 80 (1981)). Nevertheless, after the 2010 Census, six Wisconsin cities and counties — Crawford County and the cities of New Lisbon, Portage, Prairie du Chien, and Stanley — avoided prison gerrymandering.

For 2020, these local efforts will be easier than ever before because the Census Bureau is including additional detail within its redistricting data. The Census Bureau will be, for the first time, publishing counts of incarcerated people in a special table in the PL94-171 redistricting data file — specifically to help, in the Census Bureau’s words, “those in the redistricting community who must consider whether to include or exclude certain populations when redrawing boundaries.”