

A PRISON IS NOT A HOME: THE LESSON OF PEOPLE V. CADY

When drawing legislative districts, New York State counts incarcerated persons as “residents” of the community where the prison is located, instead of counting them in the home community to which they will return, on average, within 34 months. This practice ignores more than 100 years of legal precedent holding that incarcerated persons cannot be considered “residents” of a prison for purposes of voting.

If you are sentenced to serve time in a prison far from your home community, do you become a legal resident of the community where the prison is located? More than 100 years ago, the New York Court of Appeals said no. In the case of *People v. Cady*,¹ the highest court in the state went so far as to declare it a crime for a man to register to vote as a resident of a prison where, for seven years, he had *voluntarily* committed himself.

Michael Cady was a man of little means, but with New York ingenuity, he had a plan for surviving. For seven years, Mr. Cady repeatedly confessed to vagrancy, and had himself committed to a New York city prison known as “the Tombs.” The prison was so much a home for Mr. Cady that he was allowed to leave the prison during the day to run errands for the warden. Each time a six-month commitment ended, Mr. Cady applied for another such commitment, and he had every intention of doing so indefinitely.

Because Mr. Cady was committed only for vagrancy, he remained eligible to vote. When he listed the Tombs as his address when attempting to register, however, he was charged with illegal registration. The reason? According to the Court of Appeals, it was “preposterous to suppose” that Mr. Cady “had made the Tombs his residence.” The prison, the Court held, “is not a place of residence. It is not constructed or maintained for that purpose. It is a place of confinement for all except the keeper and his family.” Authority for the Court’s opinion came from the New York State Constitution itself, which specifically provides that, for purposes of voting, a person does not gain or lose residence due to incarceration.²

Nevertheless, today the New York State legislature treats all incarcerated persons as “residents” of their prison communities when calculating population entitled to representation in the legislature. This is so despite the fact that, in the years since Mr. Cady’s conviction, the legal view that prisons do not constitute places of residence has not changed, and the constitutional provision cited in the Cady opinion remains in place.³ Counties that house prisons often disregard inmates when drawing county legislative districts. Courts generally refuse to consider incarcerated persons as residents of their prisons for purposes of family law, diversity jurisdiction, public assistance, and other legal purposes.

The law is firm in its conviction that for voting and most other legal purposes, incarcerated persons are not and can never be legal residents of the communities where they are incarcerated. They are not and never will be meaningfully represented by the legislators of the districts where they happen to be sent for incarceration. Their numbers should no longer serve to increase those legislators’ power at the expense of prisoners’ home communities. It is time to end prison-based gerrymandering.

Endnotes

1. 143 NY 100, 37 N.E. 673 (1894).
2. N.Y. Const. art. II, § 4.
3. See *Muntaqim v. Coombe*, 449 F.3d 371 (2d Cir. 2006) (en banc).

