



NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

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October 18, 2006

VIA FACSIMILE

Assembly Committee on Governmental Operations
Alfred E. Smith Bldg. - 22nd Floor
Albany, New York 12248

Re: Public Redistricting Hearing

Dear Assembly Committee:

Thank you for holding a public hearing yesterday regarding redistricting and allowing the NAACP Legal Defense and Educational Fund (LDF) to address the important issues raised during the hearing. I write to follow up on a question that was posed by the Committee yesterday regarding the manner in which people with felony convictions who are incarcerated are counted in New York State.

LDF usually takes positions on issues when they arise in litigation or when we have been asked to comment on or have determined that a legislative proposal warrants our involvement. Our involvement with one aspect of the question posed at the hearing has occurred in the litigation context.

As you may know, LDF is lead counsel in *Hayden v. Pataki*, a federal challenge to New York's felon disfranchisement statute that alleged that the law disproportionately denies the vote to Blacks and Latinos and dilutes the vote of Black and Latino citizens in many areas of the State, in violation of the federal Voting Rights Act and the Constitution. Our argument is based in part on

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The NAACP Legal Defense and Educational Fund, Inc. (LDF) is not a part of the National Association for the Advancement of Colored People (NAACP) although LDF was founded by the NAACP and shares its commitment to equal rights. Since 1957, LDF has been a completely separate organization. Contributions are deductible for U.S. income tax purposes.

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N.Y. Const. art. II, §4, which provides that “for purposes of voting, no person shall be deemed to have gained or lost residence, by reason of his presence or absence...while confined in any public prison.” The New York Constitution makes clear that, but for the fact that persons incarcerated as a result of a felony conviction are barred from voting by the felon disfranchisement statute, the voting strength of many minority communities where these persons resided prior to their incarceration would be increased. (The U.S. Court of Appeals for the Second Circuit has held that the Voting Rights Act does not apply to felon disfranchisement statutes but has not yet ruled on our other claims in this lawsuit.)

That lawsuit challenges the New York felon disfranchisement statute, however, not the manner in which the United States Bureau of the Census determines the "residence" of incarcerated individuals for Census purposes. Moreover, we are unaware of federal legislative proposals to alter the methodology currently used by the Bureau of the Census, and we thus have had no occasion to take a formal position on this question.

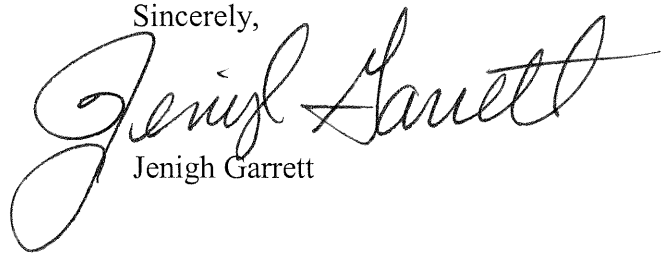
There is a strong argument that treating prisoners as "residents" of the municipalities and counties in which the prisons that they are confined are located is artificial, unrealistic, and in conflict with the New York Constitution, cited above. In connection with its consideration of legislation to establish Independent Redistricting Commissions and to prescribe criteria according to which such bodies should approach their districting responsibilities, therefore, we hope that your Committee will give serious consideration to requiring IRCs to adjust Census Bureau data by attributing to incarcerated individuals the residence locations they had prior to their incarceration.

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I am hopeful that this brief explanation has helped to clarify LDF's position on the critical issue raised by the Committee at yesterday's hearing and request that this letter is made a part of the record.

Sincerely,

A handwritten signature in black ink, reading "Jenigh Garrett". The signature is written in a cursive style with a large initial "J" and a long horizontal flourish extending to the right.

Jenigh Garrett