THE COLLEGE TOWN ADVANTAGE: THE VOTING AND REPRESENTATIONAL STRENGTH INFLATION EFFECT OF ENUMERATING COLLEGE STUDENTS IN COLLEGE TOWNS AND A PUSH FOR LEGAL CHALLENGES, LEGISLATIVE ADJUSTMENTS, AND EXECUTIVE AMENDMENTS

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For reapportionment of local districts, legislators routinely rely on unadjusted total population data from the United States' decennial Census to identify their population base and equalize their districts to comply with the One-Person, One-Vote doctrine of the Fourteenth Amendment. Since 1950, the Census Bureau has specified that students living in university housing such as dormitories will be enumerated in the Census as living in their "college towns," as opposed to their hometowns or parental homes. However, many college students are not permanent, legal, or voting residents in their college towns. This was particularly true during the 2020 Census Enumeration period, during which the vast majority of college students were not physically residing in their college towns, but were enumerated in the Census as residents of their university housing.

When local legislatures rely on unadjusted Census total population numbers to identify an apportionment base and equalize their districts, actual voting and legal residents of college towns enjoy highly inflated voting power and representational strength in comparison to neighboring districts without large student populations, creating a "college town advantage." While many college towns are disproportionately white and wealthy compared to the rest of the state, districts that neighbor universities are disproportionately minority and poor, placing the largest political dilution burden of the college town advantage on poor and minority members of local communities.

This Article argues that for local districts with large voting-ineligible college student populations, the college town advantage runs afoul of the permissible apportionment base requirement under the One-Person, One-Vote doctrine. This Article advocates for litigation over the inclusion of college students within certain localities' apportionment bases under an apportionment base theory of One-Person, One-Vote compliance. This Article highlights the issue of the current college student enumeration practice and the strength of an apportionment base legal challenge through a case student of the City of New Haven's 2022 redistricting plan in the districts surrounding Yale University. Additionally, this Article presents several legislative and executive solutions to address the limitations of college student enumeration challenges.

INTRODUCTION

On March 10, 2020, Harvard University President Lawrence Bacow sent an email to Harvard college students.[1] Beginning on March 23, Harvard University would be shutting down and sending students "home" due to the quickly spreading coronavirus. Like several schools before it and eventually nearly every college across the nation,[2] Harvard would be completely remote for the remainder of the 2020 spring semester and ultimately for the next year and a half.[3] In less than a week's time, college students across the nation packed their belongings, vacated their university housing, and returned "home." Harvard's housing system, which typically houses over ninety-eight percent of Harvard undergraduates, would remain virtually empty for nearly seventeen months.[4] Meanwhile, Harvard's college student population was scattered across different cities, states, and countries — many far away from Harvard's campus.

Several weeks after Harvard shut down, Harvard administrators sent a second important email, this time about the 2020 Census.[5] The email stated that "Harvard undergraduates w[ould] be counted by [university] administrators as living at Harvard and should not be counted in their *home* or current location."[6] Unlike in 2010 when students completed their Census individually, Harvard administrators would automatically count students as residents of their university housing and submit the 2020 Census on students' behalf, without any action or request from students.[7] By this time, students had already moved back into their parents' home or relocated to other accommodations outside of Harvard University housing. Despite no students living on campus during the 2020 Census period

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[1] Crimson News Staff, *Harvard Moves Classes Online, Asks Students Not to Return After Spring Break in Response to Coronavirus*, THE HARVARD CRIMSON (Mar. 10, 2020), https://www.thecrimson.com/article/2020/3/11/harvard-coronavirus-classes-cancelled/ [https://perma.cc/C2TM-NG5D].

[2] Abigail Johnson Hess, *How Coronavirus Dramatically Changed College for over 14 Million Students*, CNBC (Mar. 26, 2020, 2:07 PM), https://www.cnbc.com/2020/03/26/how-coronavirus-changed-college-for-over-14-million-students.html [https://perma.cc/7FH7-KSPK].

[3] John S. Rosenberg, *Harvard Staff to Return August 2*, HARVARD MAGAZINE (Mar. 22, 2021), https://www.harvardmagazine.com/2021/03/harvard-return-to-campus-august-2.

[4] *Id.; The Houses*, HARVARD COLLEGE DEAN OF STUDENTS OFFICE (last visited Mar. 18, 2023) https://dso.college.harvard.edu/houses [https://perma.cc/57RW-JA53].

[5] Joshua C. Fang, *Harvard Administrators, Students Work to Get Scattered Undergrads Counted in the Census*, THE HARVARD CRIMSON (Apr. 2, 2020), https://www.thecrimson.com/article/2020/4/2/harvard-2020-census-efforts/ [https://perma.cc/H5L7-5GTY].

[6] *Id.* (emphasis added).

[7] *Id.*

of April 1, 2020 to August 14, 2020, all 6,755 undergraduate students[8] were counted as if they were living in the districts encompassing Harvard University.

This practice of enumerating college students in their college towns, despite students attending university remotely during the 2020 Census period, was not unique to Harvard. This widespread enumeration practice was observed by universities across America and endorsed by the United States Census Bureau.[9] Moreover, the practice of counting college students who are not permanent, legal, or voting residents of a college town as inhabitants of their university housing for Census total population data purposes has been commonplace for the past seventy years, with minimal legal scrutiny or challenge.[10] Yet, the implications of including college students within a college town's total population has significant effects for the voting rights and representational strength of all citizens.

At America's founding and ratification of the 1788 Constitution, the United States Census emerged as a central tool for apportioning political power among states.[11] Today, as a "basic constitutional standard," federal, state, and local districts must be "as nearly of equal population as practical" in order to comply with the One-Person, One-Vote doctrine under the Equal Protection Clause of the Fourteenth Amendment.[12] Further, the underlying population base used for apportionment must be based on constitutionally permissible criteria.[13] Since the introduction of the United States Census in 1790, all states have relied on the Census' total population numbers to identify their apportionment base and equalize their districts.[14] In other words, states have historically relied upon Census data to comply with the equalization and permissible apportionment base requirements under the One-Person, One-Vote doctrine.

Challenges to apportionment schemes under the One-Person, One-Vote doctrine rely on two main theories: Equalization Theory, which focuses on the numerical parameters of the equal population requirement,

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[8] Juliet E. Isselbacher & Amanda Y. Su, *5,382 Undergraduates Enrolled at Harvard This Semester, Slightly Exceeding August Estimate*, THE HARVARD CRIMSON (Sept. 11, 2020), https://www.thecrimson.com/article/2020/9/11/college-enrollment-numbers-2020/ [https://perma.cc/LKW7-T6EG].

[9] *Ensuring an Accurate Count of College Students and Towns in the 2020 Census*, U.S. CENSUS BUREAU (June 18, 2020), https://www.census.gov/newsroom/press-releases/2020/2020-college-students.html [https://perma.cc/EQY6-VZEX].

[10] Borough of Bethel Park v. Stans, 449 F.2d 575, 579 (3d Cir. 1971).

[11] U.S. CONST. art. I, § 2; *Why Jefferson, Madison and the Founders Enshrined the Census in our Constitution*, U.S. CENSUS BUREAU, https://www.census.gov/programs-surveys/decennial-census/about/census-constitution.html#:~:text=The%20plan%20was%20to%20count,turning%20point%20in%20world%20history [https://perma.cc/SJT5-5W8B] (Nov. 23, 2021).

[12] Reynolds v. Sims, 377 U.S. 533, 568-86 (1964).

[13] Burns v. Richardson, 384 U.S. 73, 92 (1966).

[14] Evenwel v. Abbott, 578 U.S. 54, 60 (2016).

and Apportionment Base Theory, which focuses on the constitutional mandates of the permissible apportionment base requirement. Historically, little legal controversy has centered on the underlying population base used for apportionment.[15] Courts have shown extreme deference to legislative decisions over which populations to include within their apportionment bases and only a handful of states have elected through state constitutions or legislation to adjust Census population numbers in a meaningful way — typically to exclude certain groups of nonresidents or nonvoters.[16]

Over the past few decades there has been a rise in legal challenges to the inclusion of certain groups within apportionment bases, typically within the category of group quarters.[17] Group quarters, such as prison populations within local prisons[18] and military personnel within military bases, have emerged as a hot-button issue for reapportionment, due mainly to the large size of these populations and their real or potential ability to skew total population data.[19] However, courts have mainly upheld legislative decisions to include whichever groups in their apportionment base that they saw fit so long as the apportionment base conformed with the numerical parameters of the Equalization Theory.[20]

While much of the apportionment focus over the past several decades has been on prison populations, little legal scrutiny has been placed on a large group quarters population that is consistently included in Census total population counts: college students. Currently, the Census specifies that students living in university housing such as dormitories (*i.e.*, college group quarters) will be counted in their college towns.[21] For districts with large student populations, this results in thousands of college students being included within a state's total population data.[22] However, many college students are not permanent, legal, or voting residents of their college

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[15] *Burns*, 384 U.S. at 91.

[16] *Id.* at 92.

[17] National Conference of State Legislatures, Redistricting Law 2010 129 (2009); *see, e.g.*, Michael Skocpol, *The Emerging Constitutional Law of Prison Gerrymandering*, 69 Stan. L. Rev. 1473 (2017); Faith Stachulski, *Prison Gerrymandering: Locking Up Elections and Diluting Representational Equality*, 2019 No. 1 U. Ill. L. Rev. 401 (2019).

[18] *See* Skocpol, *supra* note 17, at 1475-76 ("The practice of including prison populations within a district's apportionment base is also commonly referred to as 'prison gerrymandering.'").

[19] *See generally* Nathaniel Persily, *The Law of the Census: How to Count, What to Count, Whom to Count, and Where to Count Them*, 32 Cardozo L. Rev. 755 (2011).

[20] Borough of Bethel Park v. Stans, 449 F.2d 575, 580 (3d Cir. 1971).

[21] *Residence Criteria and Residence Situations for the 2020 Census of the United States*, U.S. Census Bureau (2020), 4, https://www.census.gov/content/dam/Census/programs-surveys/decennial/2020-census/2020-Census-Residence-Criteria.pdf [https://perma.cc/TG34-4MPD].

[22] *See* Persily, *supra* note 19, at 786-87.

towns.[23] Thus, the current practice of enumerating college students skews Census total population numbers for college towns and their larger governing bodies.

Moreover, when legislatures rely on these unadjusted Census population numbers to identify an apportionment base and equalize their districts, *actual* voting and legal residents of college towns enjoy highly inflated voting power and representational strength in comparison to neighboring districts without large student populations. This college town vote-and-representation-inflation and neighboring district-vote-and-representation-dilution phenomenon is what this Article refers to as the "college town advantage." While many college towns are disproportionately white and wealthy compared to the rest of the state, districts neighboring these universities are disproportionately minority and poor.[24] Thus, including college students within college towns' apportionment bases disproportionately dilutes the voting and representational power of poor and minority communities. Therefore, local legislative districts that rely on college students in their Census numbers may run afoul of the permissible apportionment base requirement under the One-Person, One-Vote doctrine.

While legislative decisions to include college students within their apportionment base typically pass the deferential standards of the Equalization Theory, an Apportionment Base Theory challenge could be a viable approach to addressing this college town advantage. Although other group quarters populations have experienced mixed results with Apportionment Base Theory challenges to redistricting plans, the distinctive characteristics of college student populations support the notion that adjustments to Census population numbers are not only compelling, but necessary. This Article advocates for litigation over the inclusion of college students within a locality's apportionment base under an Apportionment Base Theory. It highlights the issue of the current college student enumeration practice and the strength of an apportionment base legal challenge through a case study of New Haven City's 2022 Redistricting Plan in the districts surrounding Yale University.

By analyzing the impact of college student populations in apportionment and advocating for an Apportionment Base legal challenge to their inclusion under the One-Person, One-Vote doctrine, this Article addresses a large gap in the legal discourse surrounding college group quarters for purposes of apportionment and hopes to provide an actionable perspective

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[23] *See* OZAN JAQUETTE, STATE UNIVERSITY NO MORE 2 (Jack Kent Cooke Found., 2017), https://www.jkcf.org/research/state-university-no-more-out-of-state-enrollment-and-the-growing-exclusion-of-high-achieving-low-income-students-at-public-flagship-universities/, [https://perma.cc/4F9T-6R7Q] (While private colleges have historically attracted out-of-state students, many public flagship universities meant to serve high-achieving, low-income students within their state are now majority out-of-state students as well.).

[24] *Infra* Section III.A.2.

on the topic during a salient time in the redistricting process. This Article also adds to the group quarters apportionment conversation ahead of a projected prison group quarters circuit split that will likely manifest due to an upcoming Second Circuit challenge. A college group quarters legal challenge would not only address voting and representational inequality in municipal legislative districts with large student populations, but would also aim to encourage legislative action around population adjustments for group quarters as well as executive action around "usual place of residence" definitions for group quarters. These proposed lawsuits and policy changes would also create new avenues and establish good law for challenges to the inclusion of other group quarters in apportionment bases, particularly prison populations.

Section I unpacks the centrality of the decennial Census to the United States' founding and democracy, and the development of the principle of "usual place of residence" as applied to college student enumeration from 1790 to 2020. Section II analyzes the current legal state of apportionment base challenges under the Fourteenth Amendment's One-Person, One-Vote doctrine and details the two theories argued under it: Equalization Theory and Apportionment Base Theory. Section III introduces a case study of the New Haven 2022 Redistricting Plan to demonstrate the college town advantage effect of including Yale's college population in the city's apportionment base. Section III then outlines how the unique characteristics of college student populations support an Apportionment Base Theory challenge to the inclusion of Yale college students in New Haven's 2022 redistricting plan. Section IV discusses the benefits and limitations of an Apportionment Base Theory approach to college group quarters challenges and the need for additional legislative and executive action. Section V concludes.

I.   THE CENTRALITY OF THE DECENNIAL CENSUS & COLLEGE STUDENT ENUMERATION

A.   The Census at the Center of the United States Constitution

1.   The Census and State Population at America's Founding

The Census is as central to the function of the United States as Congress itself. In the aftermath of the American Revolution and the escape from British tyranny, the division of political power in the United States was a top priority for the Founding Fathers.[25] In forming the governing body, the Framers confronted the question of how federal congressional districts should be allocated to States.[26] With disagreement among states and various proposals for the structure of the new American government, the Framers eventually adopted a bicameral legislature. Under this "Great

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[25] U.S. CENSUS BUREAU, *supra* note 11.

[26] Evenwel v. Abbott, 578 U.S. 54, 64 (2016).

Compromise," each state would receive two seats in the Senate while seats in the House of Representatives would be allocated based on population.[27] The population base, or apportionment base, for representation included all inhabitants of each state "although slaves were counted as only three-fifths of a person."[28] This conception of power, derived from comparative population, not comparative wealth, reflected the American ideal of maintaining a republic of representative democracy and the democratization of political power.[29]

To secure each state's population, the Framers authored Article I, Section 2, Clause 3 of the Constitution, known as the "Census Clause" or the "Enumeration Clause," to codify the requirement that representation in the House would be apportioned among the states "according to their respective Numbers."[30] The "actual Enumeration" of the United States population, or the modern-day Census, was set to be tabulated within the first three years of America's founding and every ten years after.[31] While Censuses had historically been used for purposes of taxes, property, and military enlistment, the idea to utilize the United States' Census to measure each state's population for political empowerment was groundbreaking at the time of America's founding.[32] Under the Census Clause, Congress was given exclusive authority to establish enumeration procedures.[33] Within two years, Congress had passed the first Census Act, authorizing the marshals of the United States judicial districts to oversee the enumeration process of the nation's thirteen states and the several districts.[34] The Census

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[27] *Id.*

[28] *Id.* at 65.

[29] U.S. CENSUS BUREAU, *supra* note 11.

[30] U.S. CONST. art. I, § 2, cl. 3 (repealed by U.S. CONST. amend. XIV) ("Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.").

[31] *Id.*

[32] U.S. CENSUS BUREAU, *supra* note 11.

[33] U.S. CONST. art. I, § 2; *see also* 13 U.S.C. §§ 4-5 (Authority to determine Census procedures was later delegated to the Census Bureau. Under 13 U.S.C. § 5, Congress delegated the authority to establish Census procedures to the Secretary of Commerce. Under 13 U.S.C. § 4, the Secretary of Commerce was also permitted to delegate authority to the United States Census Bureau within the Department of Commerce. Established in 1902, the Census Bureau has since overseen the administration of and determined the procedures for the decennial Census.).

[34] Act of March 1, 1790, ch. 2, 1 Stat. 101, 101; *1790 Overview*, U.S. CENSUS BUREAU, https://www.census.gov/history/www/through_the_decades/overview/1790.html [https://perma.cc/KF72-5JLV] (last visited Mar. 4, 2023).

Act of 1790 distinguished citizens by housing units, and recorded each household's family members, free persons, and enslaved persons.[35] Under the Act, every household was required to complete the Census and the resulting data would be made available to the public and the President.[36] The first enumeration of the new Americans was largely successful, and the first Census collected data on the race, age, and sex of nearly four million Americans.[37]

   2.   The Census and State Population During the Reconstruction Era

   Following the Civil War and the adoption of the Thirteenth, Fourteenth, and Fifteenth Amendments, debate regarding the proper basis to distribute seats in the House of Representatives began anew.[38] Amending the Census Clause, the Fourteenth Amendment provided that "[r]epresentatives shall be apportioned among the several States according to their respective numbers, *counting the whole number of persons in each State*."[39] Many raised concerns that while southern states were resistant to enfranchise formerly enslaved inhabitants of their states, the inclusion of newly freed individuals as one person, versus third-fifths of a person, would dramatically increase the southern states' population for purposes of representation.[40] Despite these concerns, total population remained the metric for assigning federal power.[41] In doing so, the Fourteenth Amendment re-emphasized the centrality of the Census, which counted all persons residing in the state, regardless of their voting eligibility.

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   [35] Act of March 1, 1790, ch. 2, 1 Stat. 101, 102 (The Census Act of 1790 operated under a Schedule that called for the name of the head of the family and the number of persons in each household of the following descriptions: "1) Free White males of 16 years and upward (to assess the country's industrial and military potential); 2) Free White males under 16 years; 3) Free White females; 4) All other free persons, and 5) Slaves."); *see also* Act of May 6, 1870, ch. 87, 16 Stat. 118 (The Census Act of 1850 canceled the "slave schedule" following the adoption of the Thirteenth Amendment.).

   [36] Act of March 1, 1790, ch. 2, 1 Stat. 101, 101-03.

   [37] *U.S. Census Bureau History: The 1918 Influenza Pandemic*, U.S. CENSUS BUREAU,   https://www.census.gov/history/www/homepage_archive/2023/march_2023.html [https://perma.cc/CTT4-MLSJ] (last visited Mar. 4, 2023).

   [38] Evenwel v. Abbott, 578 U.S. 54, 66 (2016).

   [39] *Id.* at 67 (emphasis added).

   [40] *Id.* at 66.

   [41] *Id.* at 67; *see* U.S. CONST. amend. XIV, § 2.

B.   *The Principle of "Usual Place of Residence"*

1.   "Usual Place of Residence" Under the 1790 Census Act & College Student Enumeration

Determining *where* to count citizens to ensure that states' political power was based on an *accurate* count of their population was crucial for the success of both the Census and the new nation. To address this responsibility, the 1790 Census Act introduced the principle of "usual place of residence."[42] Under this principle, every person whose "usual place of abode" on Census Day was with their family would be counted in the state of their family's home.[43] Individuals "without a settled place of residence" and those who were "occasionally absent at the time of the enumeration," would be counted at their "usual place of residence" in the United States.[44] While the principle of "usual place of residence" for transient citizens was undefined under the 1790 Census,[45] the state residency criteria largely conceptualized citizens as members of "family units."[46] As such, most citizens were included as residents of their family's home state. The procedure for counting transient citizens in their family's hometown was held steadfast for 160 years.[47] Under this concept of "usual place of residence," college students were counted as residents of their parents' home state, even if they attended college in a different state.[48]

2.   A Change in "Usual Place of Residence": The Census Bureau's 1950 Decision to Count College Students in College Towns

However, in 1948, the definition of "usual place of residence" changed. A 1948 study by the Census Bureau's Technical Advisory Committee on General Population Statistics revealed a stark increase in the number of college students enrolled in universities across the nation.[49] The Committee alleged that with the rise in the college student population, the current procedure of enumerating college students at their parents' home failed to account for college students who were neither reported at their parental home nor their college state.[50] To address the potential under-

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[42] Act of March 1, 1790, ch. 2, § 5.

[43] *Id.*

[44] *Id.*

[45] *But see* Borough of Bethel Park v. Stans, 449 F.2d 575, 578 (3d Cir. 1971) ("[I]t has been stipulated that the following criterion was used by the Bureau of the Census to determine usual place of residence for the 1970 Census: 'Persons are enumerated at the place in which they generally eat, sleep and work, with persons who are temporarily absent for days or weeks from such usual place of abode being counted as residents of their usual place of abode.'").

[46] Act of March 1, 1790, ch. 2, § 1.

[47] *Borough of Bethel Park*, 449 F.2d at 579.

[48] *Id.*

[49] *Id.*

[50] *Id.*

enumeration of college students, the Committee recommended a change in enumeration procedure for college students: to count college students as residents of the state where they live while they attend college.[51]

By adopting this recommendation, the Census Bureau redefined college students' "usual place of residence" from their home state to their college town. The Census Bureau believed that this change would better assure that all college students were enumerated in the Census. Further, the Bureau sought to eliminate perceived inconsistencies between counting students at home and the principle of "usual place of residence," as students who attended college out-of-state spent the majority of their four-year enrollment living in their college towns.[52] This procedural change, while seemingly minor at the time, marked a dramatic shift in the treatment of college student populations for enumeration purposes.[53]

3. A Legal Challenge to the New "Usual Place of Residence" Standard for College Students

While little controversy surrounded the procedural change at the time of its adoption, the question of whether the new concept of "usual place of residence" properly reflected the "whole number of persons in each State" as mandated by the Constitution and Census Acts[54] was raised two decades later.[55] In the Third Circuit case *Borough of Bethel Park v. Stans*, two Philadelphia residents challenged the new enumeration procedure following the 1970 Census and subsequent redistricting process.[56] The lawsuit challenged residency for three different group quarters[57] populations at once: (1) college students, (2) members of the Armed Services stationed in the United States, and (3) inmates of institutions. Under the new Census procedure, these three group quarters populations were counted as residents of the states in which their respective institutions were located rather than the states they would have considered their "legal residence for all purposes other than the census."[58]

The Plaintiffs argued that counting these three group quarters populations where they were temporarily located instead of their home states violated the Plaintiffs' rights by undercounting the population in their political subdivisions. The result of this under-enumeration was threefold.

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[51] *Id.*

[52] *Id.*

[53] *Id.*

[54] *Supra* Section I.A.2.

[55] *Borough of Bethel Park*, 449 F.2d at 578.

[56] *Id.* at 577.

[57] Residence Criteria and Residence Situations for the 2020 Census of the United States, *supra* note 21, at 1 n.2 (The Census Bureau defines group quarters as "places where people live or stay in group living arrangements, which are owned or managed by an entity or organization providing housing and/or services for the residents.").

[58] *Borough of Bethel Park*, 449 F.2d at 577.

First, "certain political subdivisions w[ould] be denied their proper share of various funds allocated by both the Federal Government and the Commonwealth of Pennsylvania according to the federal census" (government fund allocation).[59] Second, "these subdivisions w[ould] be denied proper representation in the House of Representatives and the Legislature of the Commonwealth of Pennsylvania" (representation).[60] Third, "voters in these subdivisions w[ould] have the weight of their votes in federal and local elections improperly diluted" (vote dilution).[61]

The Third Circuit upheld both the Census Bureau's decision to count these populations at their temporary locations and the Pennsylvania legislature's decision to use the resulting Census total population numbers without adjustments.[62] Under the court's college student reasoning, because the Bureau had exclusive authority to determine procedures for conducting the federal Census, they could not be forced to consider whether students indicate "a particular connection or attachment to the state of [their] parental home, register[] to vote in that state, and accordingly regard[] it as [their] home" for purposes of determining college students' "usual place of residence."[63] While for the previous 160 years, and until twenty years prior to this case, the Bureau *did* in fact view college students' parental homes as their "usual place of residence," the court ruled that the Bureau's decision to alternatively count college students as residents of their college town was reasonable.[64] Likewise, the court reasoned that because state legislatures have exclusive authority to determine which populations to include in their apportionment base, the Pennsylvania Legislature could not be *forced* to exclude college students unless their exclusion was regulated by Congress or required for compliance with the Constitution.[65]

The court did not rule on the claim that the new Census enumeration procedures would result in improper vote dilution.[66] Instead, the court only addressed whether the Bureau's new enumeration procedures and Pennsylvania's reliance upon them were "reasonable."[67] While the court acknowledged that a college student "may be designated by the state of his parental home as a resident or domiciliary and permitted to register

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[59] *Id.*

[60] *Id.*

[61] *Id.*

[62] *Id*. at 582-83.

[63] *Id*. at 579-80.

[64] *Id*. at 580-81 ("We think that the decision of the Bureau concerning the enumeration of college students was reasonable. Once a person has left his parental home to pursue a course of study at a college in another state which normally will last for a period of years, it is reasonable to conclude that his usual place of abode ceases to be that of his parents. Such students usually eat, sleep, and work in the state where their college is located.").

[65] *Id.*

[66] *Id.* at 583.

[67] *Id.* at 580.

there for voting purposes," the court ruled that the Bureau's enumeration policy as applied to college students was "reasonable."[68] Further, while the court recognized that enumerating college students in college towns in lieu of the Plaintiffs' political subdivisions could minimize the Plaintiffs' representation in federal and local governing bodies and dilute the Plaintiffs' voting power in federal and local elections, the court still found the procedure "reasonable."[69] Thus, the focus of the Third Circuit's decision was on the reasonableness of the Bureau's enumeration policy itself and Pennsylvania's *use* of that enumeration data, not the potential vote and representational dilution *effects* of Pennsylvania's reliance on the resulting Census data.

The decision by the Third Circuit demonstrates the high level of deference — the rational or reasonable basis standard — that reviewing courts have given to both Census Bureau decisions over enumeration procedures and legislative decisions over which populations to include in their apportionment base. While there have been multiple challenges to the inclusion of prison populations and military members within apportionment bases as individual group quarters populations over the past several decades, since the 1971 Third Circuit decision, there has been little litigation over the Census' enumeration of college students in their college towns and the dramatic effect it can have on funding, representation, and voting.[70] However, the events surrounding the college student enumeration process during the 2020 Census period created the most salient ground for legal challenges to the inclusion of college students in apportionment bases in the past fifty years.

C. Applying "Usual Place of Residence" to College Students During the 2020 Pandemic

1.   The Effect of the 2020 COVID Pandemic: College Towns Without College Students

On April 1, 2020, the 2020 Census period commenced, marking the start of the decennial enumeration process.[71] However, the 2020 Census period was unique, as it came in the midst of a global pandemic marked by remote work, virtual school, and housing displacement for college students.[72] Among other things, universities across the nation moved classes online, closed university housing, and sent students "home."[73] Of the over

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[68] *Id.*

[69] *Id.* at 580-82.

[70] *See* Persily, *supra* note 19, at 786.

[71] *What is Census Day?*, U.S. CENSUS BUREAU (Apr. 1, 2020), https://censuscounts.org/what-is-census-day/ [https://perma.cc/QZU2-HA29].

[72] *Id.*

[73] *Moving classes online and other important information related to COVID-19 response*, YALE COLLEGE (Mar. 10, 2020),

19.4 million college students attending American colleges that year,[74] an estimated 14.1 million postsecondary students were participating in distance learning by the fall of 2020, representing 73% of the postsecondary student population.[75] These mass college campus closures, along with distance learning, meant that in most cases, but particularly for private colleges with large out-of-state student populations, students no longer physically resided within the same district lines as they would have if they had remained in their university housing during the school year.[76]

In response to the large-scale relocation of college students due to the global pandemic, the Census Bureau created additional tools for college student enumeration. The *Residence Criteria and Residence Situations for the 2020 Census of the United States* laid out guidelines to ensure that the Census Bureau counted everyone in the "right place."[77] Under the general residence guidelines, the Bureau stated that it would adhere to its regular policy of "usual place of residence" by counting individuals where they "live[] and sleep[] *most* of the time."[78] However, recognizing that "many students ha[d] left their college campuses because of school closures before Census questionnaires were delivered," the Census Director reached out to colleges and universities with significant off-campus student populations and instructed them to count students "where they *would* have been living and sleeping as of April 1, 2020 . . . even if they went home early due to a school closure or shift to distance learning."[79] Thus, instead of having *students* complete the Census where they were physically located during the enumeration period, as was the practice in previous years, the Census Bureau asked *university administrators* to complete the Census on students' behalf and count them in college quarters despite students living elsewhere.[80]

While these guidelines specifically targeted the enumeration process during the 2020 global crisis, they highlight larger issues with the 1950 "usual place of residence" procedure for college populations. First, it is likely that the vast majority of college students consider their parents'

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https://yalecollege.yale.edu/moving-classes-online-and-other-important-information-related-covid-19-response-march-10-2020   [https://perma.cc/Y7P9-JBPE].

[74] *Back-to-School Statistics*, NATIONAL CENTER FOR EDUCATION STATISTICS, https://nces.ed.gov/fastfacts/display.asp?id=372#:~:text=About%2019.4%20million%20students%20attended,million%20students%20attended%20full%20time [https://perma.cc/S466-BTA7] (last accessed Mar. 4, 2023).

[75] *Id.*

[76] *See id.* (5.4 million students were enrolled in private colleges in 2020).

[77] RESIDENCE CRITERIA AND RESIDENCE SITUATIONS FOR THE 2020 CENSUS OF THE UNITED STATES, *supra* note 21.

[78] *Id.*

[79] ENSURING AN ACCURATE COUNT OF COLLEGE STUDENTS AND TOWNS IN THE 2020 CENSUS, *supra* note 9.

[80] *Id.*

home to be their permanent residence while they are attending school. Though more data is needed on this issue,[81] this notion is supported by direct and circumstantial evidence from the 2020 enumeration period. When colleges went remote in the spring of 2020 following the COVID-19 outbreak, universities opted to send students "home"[82] and most students moved back to their parents' home.[83] Following the onset of the pandemic, the vast majority of college-aged Americans (approximately eighteen to twenty-four years old) were living with their parents, the largest percentage since the Great Depression.[84] The large movement of college students from their temporary university housing to their parental home when that housing was closed indicates college students' affiliation of their parental home with their permanent place of residence.

Second, the Bureau's college group quarters procedures also create various administrative issues. For individual students and their parents, these residence standards are not clearly or widely communicated which can lead to a wide range of accuracy issues, including students being counted as residents in more than one place. Additionally, for university administrators completing the Census on students' behalf, important demographic data such as race could potentially be omitted.[85] Further, students counted automatically by their colleges do not get the option to opt-out of being counted as residents of their university-housing locations. This is despite the fact that many students do not associate their college dorms with their legal residence, voting residence, and/or the place where they would like to be counted.[86] As a result, the Bureau's "usual place of residence" policy undermines student choice in where students chose to maintain legal residency, in where students choose to vote, and in where students would like to be counted.[87]

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[81] *See* discussion *infra* Section V.B.

[82] YALE COLLEGE, *supra* note 73.

[83] Scott S. Hall & Eva Zygmunt, *Dislocated College Students and the Pandemic: Back Home Under Extraordinary Circumstances,* 70 FAM. RELS. 689, 689–704 (2021), https://doi.org/10.1111/fare.12544 [https://perma.cc/7966-JRB7]; Richard Fry, Jeffrey S. Passel & D'Vera Cohn, *A majority of young adults in the U.S. live with their parents for the first time since the Great Depression*, PEW RESEARCH (Sept. 4, 2020), https://www.pewresearch.org/fact-tank/2020/09/04/a-majority-of-young-adults-in-the-u-s-live-with-their-parents-for-the-first-time-since-the-great-depression/ [https://perma.cc/L6VM-8MFU].

[84] *Id*.

[85] *Counting College Students*, U.S. CENSUS BUREAU (Mar. 26, 2020), https://www.census.gov/library/fact-sheets/2020/dec/counting-college-students.html [https://perma.cc/J9VK-PLZZ] (emphasis added); *see supra* note 9.

[86] RESIDENCE CRITERIA AND RESIDENCE SITUATIONS FOR THE 2020 CENSUS OF THE UNITED STATES, *supra* note 21.

[87] *See* discussion *infra* Section III.B.2.a.

2. The College Town Advantage Effect: Inflating the Representational and Voting Strength of Permanent Residents and Voters in College Towns

However, the larger constitutional problem is that including college students in apportionment bases can violate the equal voting and representation protections afforded to all members of districts that comprise a larger governing body. The current Census practice of enumerating students within their college towns results in thousands of students who are not legal or voting residents of the district being included in the Census' total population data.[88] As states consistently rely on unadjusted Census total population data to apportion political power in compliance with the Fourteenth Amendment, these large populations of voting-ineligible, non-legal resident college students are continually included within apportionment bases.[89] While voting-ineligible, non-legal resident students can make up a substantial portion of a college town's population under Census total population data, districts without large student populations in actuality reflect a larger share of voting-eligible, legal residents. As a result, when districts within a larger governing body are equalized based on Census data that includes college students, districts that encompass universities can have a much smaller number of *actual* voters and legal residents than other districts. The effect of this practice thus dilutes the voting and representational strength of residents in districts that neighbor universities by giving outsized weight to the voting and representational strength of voting-eligible, legal residents in college towns.

Moreover, while many college towns are disproportionately white and wealthy compared to the rest of the states in which they are situated, districts that neighbor universities are disproportionately minority and poor.[90] Thus, the college town advantage effect places the largest political dilution burden on poor and minority members of local districts. While this college town advantage effect is a problem that has occurred for decades, in 2020, not only were college students included in apportionment bases despite many being voting-ineligible non-legal residents, but college students were included in apportionment bases despite not even living in their college towns during the Census enumeration period. Therefore, counting college students as residents of the districts where their university housing is located is not only inaccurate, but significantly skews total population data and inflates the voting power and representational strength of eligible voters in college towns.

This issue, while exacerbated during the 2020 pandemic, has persisted since the Census Bureau's 1950 decision to include college students as residents of their college towns, in lieu of the previous practice of counting

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[88] RESIDENCE CRITERIA AND RESIDENCE SITUATIONS FOR THE 2020 CENSUS OF THE UNITED STATES, *supra* note 21, at 4.

[89] Evenwel v. Abbott, 578 U.S. 54, 60 (2016).

[90] *See* discussion *infra* Section III.A.2.

students as residents of their home state.[91] As a result, over the past seventy years, college student populations have emerged as a ripe legal battlefield to challenge group quarters apportionment, and particularly now following the 2020 Census and resulting redistricting process. The next Section analyzes the current legal state of group quarters apportionment base challenges under the Fourteenth Amendment's One-Person, One-Vote doctrine, and details the two theories argued under it: Equalization Theory and Apportionment Base Theory.

II.   APPORTIONMENT BASE CHALLENGES UNDER THE FOURTEENTH
                            AMENDMENT

A. One-Person, One-Vote Doctrine

To comply with the Equal Protection Clause of the Fourteenth Amendment when apportioning districts, federal, state, and local legislative districts must be drawn "as nearly of equal population as practical."[92] Equal population is the standard for equal protection in apportionment because "unequal numbers of constituents" in different districts dilutes the votes of individuals in one district by overweighting and overvaluing the votes of individuals in another.[93] The equal population requirement ensures that "the weight of a citizen's vote cannot be made to depend on where he lives."[94] Thus, the equal population requirement serves as a safeguard against the "debasement of voting power and diminution of access to elected representatives,"[95] a political concern debated vigorously following the introduction of the Constitution and the Fourteenth Amendment themselves.[96]

To satisfy this equal population safeguard, the Supreme Court has made clear that legislative apportionment plans must be such that each person is afforded "one vote," a Constitutional principle under the Fourteenth Amendment known as the One-Person, One-Vote doctrine.[97] Courts have noted two personal interests that underlie the One-Person, One-Vote doctrine. First, "the right or interest in voting and in having one's vote counted on an equal basis with others."[98] Second "the interest in being

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[91] *See* discussion *supra* Section I.B.2.

[92] U.S. CONST. amend. XIV, § 1; Reynolds v. Sims, 377 U.S. 533, 577-86 (1964).

[93] Reynolds, 377 U.S. at 562-63.

[94] *Id.* at 567.

[95] Kirkpatrick v. Preisler, 394 U.S. 526, 531 (1969).

[96] *See* discussion *supra* Sections I.A.1, I.A.2.

[97] Gray v. Sanders, 372 U.S. 368, 381 (1963).

[98] Calvin v. Jefferson Cnty. Bd. of Commissioners*,* 172 F. Supp. 3d 1292, 1303 (N.D. Fla. 2016) (citing *Reynolds*, 377 U.S. at 568 ("an individual's right to vote . . . is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the State.").

represented on an equal footing with one's neighbors."[99] In other words, One-Person, One-Vote strikes at the heart of electoral and representational equality, thus capturing the concerns over voting power and representation that underlie America's founding.[100] Because the equal population requirement is central to satisfying the One-Person, One-Vote rule, the equal population requirement also strikes at the heart of electoral equality and representational equality.

The Supreme Court's embrace of the One-Person, One-Vote doctrine set the stage for malapportionment claims against federal, state, and local reapportionment plans perceived to be in violation of the One-Person, One-Vote doctrine. The Supreme Court's 1962 decision in *Baker v. Carr* established the judiciary's ability to review malapportionment cases under the Fourteenth Amendment's Equal Protection clause.[101] The following year, under the *Barr* grant of reviewing authority, *Gray v. Sanders* explicitly adopted the One-Person, One-Vote doctrine for federal legislative districts.[102] The now-famous majority opinion authored by Justice Douglas stated that: "[t]he conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing — *one person, one vote*."[103] *Reynolds v. Sims*, decided one year later, extended the One-Person, One-Vote doctrine to state legislative districts, holding that "the Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, *as nearly of equal population as is practicable*."[104] This doctrine, likewise, includes local districts.[105]

Under the constitutional parameters of One-Person, One-Vote, legal challenges to apportionment schemes have taken the form of two main theories: (1) the Equalization Theory, and (2) the Apportionment Base Theory. As reapportionment schemes must comply with both equalization and permissible apportionment base requirements, legal challenges can be made under either theory. The following subsections explores both theories.

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[99] *Id.* (citing *Kirkpatrick*, 394 U.S. at 531 ("Equal representation for equal numbers of people is a principle designed to prevent debasement of voting power *and diminution of access to elected representatives*.") (emphasis added).

[100] *Id.* at 1304.

[101] Baker v. Carr, 369 U.S. 186 (1962).

[102] *Gray*, 372 U.S. 368; *see also* Wesberry v. Sanders, 376 U.S. 1, 7-8 (1964) (holding that art. I, § 2 mandates that "Representatives be chosen 'by the People of the several States' means that as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's.").

[103] Gray, 372 U.S. at 381 (emphasis added).

[104] Reynolds v. Sims, 377 U.S. 533, 577 (1964) (emphasis added).

[105] *See* Avery v. Midland Cnty., Tex., 390 U.S. 474, 480-81 (1968); *Kessler v. Grand Cent. Dist. Mgmt. Ass'n, Inc.*, 158 F.3d 92, 100 (2d Cir. 1998).

1.   Equalization Theory Under One-Person, One-Vote

The Equalization Theory focuses on the number of constituents included in individual districts of a legislative body in order to challenge apportionment schemes that do not maintain districts that are as nearly of equal population as practical.[106] Challenges under the Equalization Theory involve analysis of population deviations between districts. In this analysis, the Supreme Court has made an important distinction between "minor" deviations and other forms of deviation.

The Supreme Court has held that "minor deviations from mathematical equality," or deviations among legislative districts that are less than ten percent, will be considered *de minimis* and do not require justification from the state.[107] Thus, "minor" mathematical deviations from equal population, alone, are insufficient to establish a prima facie case of invidious discrimination under the Fourteenth Amendment.

Conversely, apportionment plans with population deviations that exceed ten percent *do* create a prima facie case of invidious discrimination.[108] As a result, states are required to provide a "satisfactory explanation grounded on acceptable state policy" for apportionment plans that exceed the 10% threshold.[109] The Court has adopted a rational basis standard to test the "ultimate inquiry" of whether an apportionment plan (1) "may reasonably be said to advance [a] rational state policy" and, if so, (2) "whether the population disparities among the districts that have resulted from the pursuit of this plan exceed constitutional limits."[110]

While the Court has articulated some limits under the rational basis standard,[111] it has accepted a wide range of legislative justifications for apportionment plans that exceed the 10% threshold.[112] Policies centered around "core preservation," meaning an attempt to preserve the historical

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[106] *See Reynolds*, 377 U.S. at 577.

[107] Brown v. Thomson, 462 U.S. 835, 842 (1983).

[108] *Id.* at 842-43; *see, e.g.*, Wesberry v. Sanders, 376 U.S. 1, 7 (1964) (holding that Georgia apportionment plan in which a single district represents two to three times as many constituents as another district violates the Fourteenth Amendment).

[109] *Brown*, 462 U.S. at 843. (citing *Swann v. Adams,* 385 U.S. 440, 444 (1967)).

[110] *Id.*

[111] *See Reynolds*, 377 U.S. at 579-80 ("neither history alone, nor economic or other sorts of group interests, are permissible factors in attempting to justify disparities from population-based representation.").

[112] *See, e.g.*, *Brown*, 462 U.S. at 864 (upholding a Wisconsin House of Representatives apportionment plan with an average population deviation of sixteen percent and a maximum deviation of eighty-nine percent based on a Wisconsin constitutional policy of preserving county boundaries); Mahan v. Howell, 410 U.S. 315, *modified,* 411 U.S. 922 (1973) (upholding a Virginia House of Delegates reapportionment plan with a population deviation of 16.4% based on a Virginia statutory policy of maintaining integrity of traditional county and city boundaries.).

district boundaries of a state or locality, have emerged as a key tool of defense for state plans that exceed the 10% threshold. However, "core preservation" can have the effect of perpetuating historical racial, socio-economic, and political inequalities under the guise of "neutral" core preservation.[113] This practice, without the appropriate legal challenges and judicial intervention, can create a vicious cycle of state policy justifications that pass rational basis review while also creating significant population deviations and perpetuating historical injustices.

With the strict confines of the "10% threshold," the Equalization Theory leaves little room for legal creativity. Instead, the 10% threshold and the rational basis standard for deviations that exceed this threshold have served as a fallback for proponents of malapportionment schemes. Indeed, Equalization Theory challenges to apportionment schemes that fall below the 10% threshold seldom succeed.[114] Likewise, Equalization Theory challenges to apportionment schemes that exceed the 10% threshold can be defeated by policy justifications. Thus, the seemingly bright-line nature of the 10% threshold has frustrated challenges to malapportionment because the Court has given extreme deference to legislative decisions.

2.   Apportionment Base Theory Under One-Person, One-Vote

The second main theory of One-Person, One-Vote challenges is the Apportionment Base Theory. While the Equalization Theory focuses on mathematical equalization, the Apportionment Base Theory focuses on whether the population base underlying apportionment is based on constitutionally permissible criteria.[115] As apportionment plans must satisfy both the equalization and apportionment base requirements of One-Person, One-Vote, "the 10% threshold [under the equalization requirement] is not a safe harbor."[116] Where an apportionment scheme has a population deviation less than 10% or a rational basis for exceeding the 10% threshold, plaintiffs can still successfully challenge its constitutionality under the Fourteenth Amendment "if it can be shown that 'designedly or otherwise, a multi-member constituency apportionment scheme, under the circumstances of a particular case, would operate to minimize or cancel out the voting strength of racial or political elements of the voting population."[117] The parameters for compliance with the Apportionment Base Theory therefore requires a less rigid set of rules and leaves much more room for argument and judicial analysis than the Equalization Theory.

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[113] Jacksonville Branch of NAACP v. City of Jacksonville, 635 F. Supp. 3d 1229, 1288 (M.D. Fla. 2022), *appeal dismissed,* No. 22-13544-HH, 2023 WL 2966338 (11th Cir. Jan. 12, 2023).

[114] *Brown*, 462 U.S. at 842.

[115] Burns v. Richardson, 384 U.S. 73, 92 (1966).

[116] NAACP v. Merrill, 939 F.3d 470, 477 (2d Cir. 2019); *Burns*, 384 U.S. at 92.

[117] *Burns*, 384 U.S. at 88; *Merrill*, 939 F.3d at 476.

On the one hand, as exemplified in *Borough of Bethel Park* discussed in Section I.B.3, the Court has adopted a standard of extreme deference to legislative decisions over which populations to include within their apportionment base.[118] The Court has never held that states are required as a matter of constitutional compliance to include or exclude particular groups within their apportionment base unless a choice is "one the Constitution forbids."[119] This includes groups such as "aliens, transients, short-term or temporary residents, or persons denied the vote for conviction of crime."[120]

Nonetheless, an Apportionment Base Theory approach to challenge the inclusion of college populations within districts is a promising legal and legislative avenue to push for Census total population data adjustments for several reasons. First, as noted above, the parameters for compliance with the Apportionment Base Theory requires a less rigid set of rules, thereby enabling more room for legal challenges as compared to the Equalization Theory. Second, the Court allows for adjusted Census data as a method for complying with the Equal Protection Clause. Thus, while the Supreme Court has routinely upheld the use of unadjusted Census total population data as permissible,[121] the Court has also explicitly stated that states are not *required* to rely on unadjusted Census data in order to comply with the mandates of the Equal Protection Clause.[122] Under the same rational basis standard, the Court has upheld apportionment schemes based on Census data adjusted to exclude voting-ineligible military personnel[123] and prison populations[124] as complying with the One-Person, One-Vote doctrine. Third, several states have made "meaningful" adjustments to Census numbers to exclude groups that are ineligible to vote in the state through constitutional or statutory amendments.[125] Thus, while strict reliance on Census total population data is still widely used among states, there has been a slow movement to adjust Census data to exclude certain voting-ineligible group quarters for purposes of apportionment. Finally, even though courts have given deference to state legislatures when applying the Apportionment Base Theory, courts also have expressed sensitivity to both "sophisticated" and "simpleminded" modes of discrimination, suggesting a more intense inquiry of the direct and indirect effects of

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[118] *Supra* Section I.B.3.

[119] *Burns*, 384 U.S. at 92.

[120] *Id.*

[121] *Id.*

[122] *Id.* at 91.

[123] *See e.g.*, *id.* (upholding Hawaii's use of registered voters, as opposed to total Census population under rational basis review).

[124] *Fletcher v. Lamone*, 567 U.S. 930 (2012) (summarily affirming lower court's judgment to uphold Maryland law ending prison-based gerrymandering under rational basis review).

[125] Evenwel v. Abbott, 578 U.S. 54, 60 (2016).

apportionment policies under the Apportionment Base Theory.[126] As a result, an Apportionment Base Theory approach to challenge the inclusion of college populations within districts is a promising legal and legislative avenue to push for Census total population data adjustments.

The next section demonstrates the viability of an Apportionment Base Theory challenge to the inclusion of college students in college towns through a case study of the 2022 New Haven city ward-level districts surrounding Yale College.

III.   YALE COLLEGE STUDENTS IN NEW HAVEN AND THE POTENTIAL FOR AN APPORTIONMENT BASE THEORY CHALLENGE

A.   Yale College Students in the City of New Haven

1.   Background on the 2022 City of New Haven Redistricting Process

Yale College is located within the City of New Haven, Connecticut. The city's Board of Alders, which serves as the city's legislative body, is composed of 30 Alders elected through a plurality election in each of New Haven's 30 wards.[127] In May 2022, the City of New Haven Board of Alders adopted new district lines for the city's wards based on the 2020 Census total population numbers.[128] The New Haven Charter requires that wards be consistent with the constitutional mandates of One-Person, One-Vote under both the Equal Population and Apportionment Base theories.[129] The 2022 Redistricting Plan ("2022 Redistricting Plan" or "2022 Plan") redistributed the City of New Haven residents based on the 2020 Census' total population data, with a targeted 4,467 residents per ward.[130] The approved plan largely preserved the shapes and boundaries of the previous district lines, and was noted to be the "least-changed" map presented, making only small "tweaks" to account for the 4,244 new city residents included in the 2020 Census.[131]

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[126] Reynolds v. Sims, 377 U.S. 533, 563 (1964).

[127] Code of the City of New Haven, Connecticut. Title I, Art. IV, § 1(A); § 6 (A-C) (From each of the 30 New Haven Wards, the Board of Alders are elected at the City Election during the nationwide general election years for a two-year term by a plurality vote based on individuals in the districts that they approved following a reapportionment.).

[128] *Id.*; Thomas Breen, *New Ward Map Wins Final Approval*, New Haven Independent (May 24, 2022, 1:19 PM), https://www.newhavenindependent.org/article/redistricting_approval [https://perma.cc/DT9T-VGWW].

[129] *See* Code of the City of New Haven, Connecticut. Title I, Art. II, § 4 (A); *supra* Part III.

[130] Breen, *supra* note 128.

[131] *Id.*
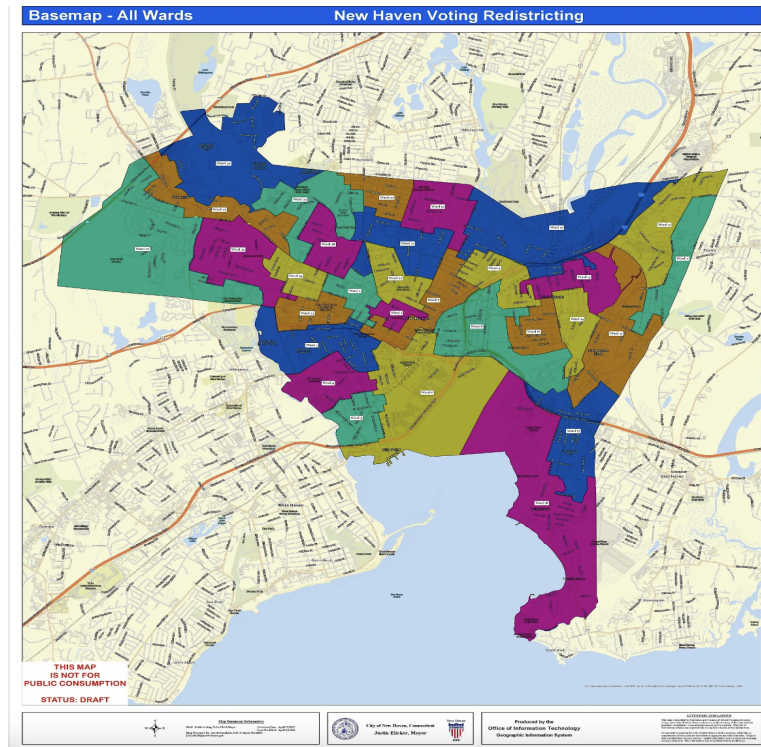
Figure 1: 2022 Redistricting Plan

On the day the map was approved, Hill Alder and Redistricting Committee Chair Evelyn Rodriguez stated that "[t]he goal of redistricting is to ensure that every resident's vote has the same weight by equalizing the number of residents in each ward."[132] The new map takes effect in 2024.[133]

2. New Haven Racial and Socio-Economic Demographics: the Impact of Yale College Students in New Haven

The city of New Haven is the most racially diverse city in Connecticut.[134] In 2020, the minority population in New Haven, which has consistently increased over the past several decades, accounted for 72% of the

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[132] *Id.* (The Committee also stated the following goals in redistricting New Haven: (1) keeping each ward in a single state assembly district; (2) keeping as much of an old ward together as possible and moving the rest into as few new wards as possible; (3) keeping current alders in their current wards; (4) ensuring that wards are contiguous and reasonably compact; (5) preserving "communities of interest," and (6) taking into account "geographic and political boundaries.").

[133] *Id.*

[134] *New Haven 2021 Equity Profile*, Data Haven, Page 4 (2021), https://www.ctdatahaven.org/sites/ctdatahaven/files/new_haven_profile_v1.pdf; *Quick Facts: New Haven City, Connecticut*, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/newhavencityconnecticut (last visited Mar. 18, 2023).

total population.[135] Latino residents represented the largest racial group in New Haven at 31% of the overall population, followed closely by Black residents at 30%.[136] In New Haven, Black and Latino residents fell well below the state median income level, while white residents greatly exceeded it, creating large racial disparities in wealth between white and minority New Haven residents.[137] While the city of New Haven is overwhelmingly minority and low socioeconomic status, the "Downtown" neighborhood surrounding Yale University is not. Yale University, which is situated in the City of New Haven Wards 1 and 22, accounts for the bulk of Downtown New Haven.[138] In 2020, Downtown New Haven was 48% white, the fourth-highest percentage of white population in New Haven.[139] Unlike the 61% Latino and Black population that made up New Haven overall, Downtown was composed of merely 11% Latino and 9% Black residents, the third lowest percentage of Black residents and the lowest percentage of Latino residents in all of New Haven.[140] In contrast, at 26% Asian residents, Downtown had the highest percentage of Asian residents in all of New Haven by a wide margin, with the vast majority of New Haven neighborhoods containing 5% or less Asian residents in their population.[141]

While the racial demographics of Downtown New Haven do not mirror those of the larger New Haven city, they do mirror the racial demographics of Yale College, which encompasses the undergraduate student body at Yale University. In the 2019-2020 school year, White students comprised 42% of the student body (compared to 48% for Downtown residents), Black students comprised 8% of the student body (compared to 9% for Downtown residents), Latino students comprised approximately

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[135] Kelly Davila & Mark Abraham, *New Haven Neighborhood Changes 2010 to 2020*, DATAHAVEN (2021), https://www.ctdatahaven.org/reports/2020-census-data-demographic-change-connecticut-town-and-city-neighborhoods/new-haven-neighborhood-changes-2010-2020.

[136] *Id.* (In 2020, the racial breakdown of New Haven residents was as follows: 31% Latino, 30% Black, 28% white, 7% Asian, and 5% "Other.").

[137] *Supra* note 134, at 11 (The overall median income for all adults in New Haven is over $15,000 less than the state average at $45,000. However, racial disparities in income are prominent, with white New Haven residents making a median income of $65,000 yearly, Black residents making $38,000, and Latino residents making $34,000. These numbers represented the median income by race/ethnicity based on male full-time workers aged twenty-five or older with positive income in 2019. No data was reported for Asian median income.).

[138] *Infra* Section III.A.3.

[139] Davila et al., *supra* note 135.

[140] *Id*.

[141] *Id.* (The next highest percentage of Asian residents resided in Prospect Hill with 22% Asian and the third highest was merely 14% Asian. Of the nineteen neighborhoods represented in this data set, these three neighborhoods are the only neighborhoods that had an Asian resident percentage higher than 10%, with fourteen neighborhoods maintaining merely 5% or less Asian residents.).

14% of the student body (compared to 11% for Downtown residents), and Asian students comprised approximately 19% of the student body (compared to 26% for Downtown residents).[142] The racial demographics of Yale College's student body likely track so closely to the racial demographics of Downtown New Haven because of how much of Ward 1 and Ward 22 is made up of Yale's college population. If the undergraduate student population was split evenly between the two districts, it would account for approximately 3,036 students in each Ward. That number represents 65.42% of the overall population in Ward 1 and 67.57% of the overall population in Ward 22 under the 2022 Redistricting Plan.[143]

Moreover, estimates of the median income in Downtown New Haven nearly double the state average.[144] This too can likely be attributed to the Yale College student and faculty population living in the area. As a 2022 lawsuit challenging the financial aid offers at Yale University and similarly situated private universities under federal antitrust laws revealed, "[t]he median family income of [Yale] undergraduates is $192,600; 19% of undergraduates come from the top 1% of the income distribution, and 69% come from the top 20%; and only 2.1% come from the bottom 20% of the income distribution."[145] Similarly, the average value of the salary

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[142] *Fall Enrollment 2019-20*, YALE OFFICE OF INSTITUTIONAL RESEARCH, https://oir.yale.edu/sites/default/files/ipeds_fall_enrollment_data_2019-20.pdf (last visited Mar. 18, 2023).

[143] Breen, *supra* note 128 (Under the 2022 Redistricting Plan, Ward 1 has a population of 4,641 residents, 174 residents above the targeted ward population. Ward 22 has a population of 4,493 residents, 26 residents above the targeted ward population.).

[144] *See e.g.*, *The Highest and Lowest Income Areas in Downtown New Haven, New Haven, CT*, Best Neighborhood, https://bestneighborhood.org/household-income-downtown-new-haven-new-haven-ct/ [https://perma.cc/D4N4-VKVA] (last visited Mar. 18, 2022) (Estimates of the median income of Downtown New Haven range from a low of $32,656 to a high of $91,316, but across multiple reporting sources surpass the median income of New Haven as a whole ($45,000)).

[145] Lucy Hodgman & Jordan Fitzegerald, *"Cosplaying as a different class character": life as a low-income student at Yale*, YALE DAILY NEWS (Jan. 27, 2022, 2:29 AM), https://yaledailynews.com/blog/2022/01/27/cosplaying-as-a-different-class-character-life-as-a-low-income-student-at-yale/#:~:text=%E2%80%9CYale's%20undergradu-ate%20study%20body%20is,%25%20of%20the%20income%20distribu-tion.%E2%80%9D, [https://perma.cc/TR6P-9F39]; Plaintiffs' Complaint *Henry v. Brown University* (1:22-cv-00125) ¶ 85; *see also* Gloria Guzman, *Household Income: 2021*, American Community Survey Briefs, U.S. CENSUS BUREAU (October 2022), https://www.census.gov/content/dam/Census/library/publications/2022/acs/acsbr-011.pdf ("Household income: Includes pretax cash income of the householder and all other people 15 years old and older in the household, whether or not they are related to the householder. Median: The point that divides the household income distribution into halves, one-half with income above the

and benefits package for Yale faculty during the 2019-2020 school year was $176,231 a year.[146] In contrast, the national median income in 2020 was $67,521 and nearly a fourth of New Haven residents are living in poverty.[147] The stark reality of the economic disparities between college towns and the districts neighboring them is a large, private college phenomenon that is replicated in colleges across the nation.[148]

As the demographic data reveals, the neighborhood surrounding Yale University is uniquely white and wealthy compared to the neighboring districts in New Haven. While the demographic data does not tell the complete story of the impact of college students on the districts encompassing Yale University, it does suggest that the Yale college population — which accounts for nearly two thirds of the overall population in the wards surrounding Yale — has a pronounced effect on the racial and economic demographics of Downtown New Haven.

3. Yale University Housing as College Group Quarters

Yale's undergraduate housing system is a college group quarter. As Yale's University housing system falls under the definition of "group quarters," all students who live in university housing were reported as living in New Haven Ward 1 or 22. While not the entire student body lives on campus, the vast majority reside in university housing.[149] Yale's housing system assigns incoming first-year students to one of fourteen "residential

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median and the other with income below the median. The median is based on the income distribution of all households, including those with no income.").

[146] *University Faculty Salary & Benefits (W107)*, Officer of Institutional Research, Yale University, https://oir.yale.edu/data-browser/faculty-staff/faculty/faculty-salary-benefits/university-faculty-salary-benefits-w107, [https://perma.cc/QMK7-TZD4] (last visited April 3, 2023).

[147] Emily A. Shrider, Melissa Kollar, Frances Chen & Jessica Semega, *Income and Poverty in the United States: 2020*, U.S. CENSUS BUREAU (Sept. 14, 2021), https://www.census.gov/library/publications/2021/demo/p60-273.html#:~:text=Median%20household%20income%20was%20%2467%2C521,median%20household%20income%20since%202011, [https://perma.cc/AWE4-SDSE]; *Quick Facts: New Haven City, Connecticut*, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/newhavencityconnecticut [https://perma.cc/S4SL-3DTU] (last visited Mar. 18, 2023).

[148] *See e.g.*, Jonathan Katzman, *Ending Unsheltered Homelessness in Harvard Square*, THE HARVARD CRIMSON (Feb. 12, 2019), https://www.thecrimson.com/article/2019/2/12/katzman-unsheltered-homelessness-harvard/ [https://perma.cc/67XF-RS6D].

[149] *University Housing*, YALE UNIV., https://yale.app.box.com/s/bntsno05umodywxbl98zlv595u2uzmos [https://perma.cc/PT2N-HHP5] (last visited Dec. 12, 2022) (According to Yale's Housing Data, in the 2019-2020 school year, which includes 2020 Census Day, 5,110 college students and 826 graduate/ professional students were reported as living in university housing for a total of 6,033 students).

colleges," which are dorms maintained by the university.[150] All first-year students live on Yale's "Old Campus" — located in Ward 1[151] — in dormitories designated to specific colleges.[152] Following their first year, students live in their assigned residential colleges which are spread across Ward 1 (8 colleges) and Ward 22 (6 colleges) of the City of New Haven.[153] While Downtown New Haven is largely a college town, Yale's student

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[150] *Residential Colleges*, Yale College, https://yalecollege.yale.edu/residential-colleges [https://perma.cc/QL8K-WAG7] (last visited Nov. 16, 2022).

[151] *Find Your Ward/Alderperson*, New Haven Connecticut Maps, https://newhavenct.maps.arcgis.com/apps/webappviewer/index.html?id=20871be64a704167a2f340229fa6f4a2 [https://perma.cc/465Z-RYX2] (last visited Nov. 16, 2022) (The ward in which "Old Campus" is located was found by inputting the address into New Haven city's interactive Ward-finding map system. The address used to approximate "Old Campus" is as follows: 344 College St, New Haven, CT 06511.).

[152] *Supra* note 150.

[153] *Id.*; *supra* note 151 (Ward 1 includes: Berkeley College, Branford College, Davenport College, Grace Hopper College, Jonathan Edwards College, Pierson College, Saybrook College, and Trumbull College. Ward 22 includes: Benjamin Franklin College, Ezra Stiles College, Morse College, Pauli Murray College, Silliman College, and Timothy Dwight College.

The ward in which each residential college is located was found by inputting the college's address into New Haven city's interactive ward-finding map system. The addresses used for each college are as follows:

Yale Undergraduate Dorms Wards:

1. Benjamin Franklin-22: 90 Prospect St, New Haven, CT 06511
2. Berkeley-1: 205 Elm St, New Haven, CT 06511
3. Branford-1: 74 High St, New Haven, CT 06511
4. Davenport-1: 248 York St, New Haven, CT 06511
5. Ezra Stiles-22: New Haven, CT 06511
6. Grace Hopper-1: Yale University, 189 Elm St, New Haven, CT 06511
7. Jonathan Edwards-1: 68 High St, New Haven, CT 06511
8. Morse-22: 304 York St, New Haven, CT 06511
9. Pauli Murray-22: 130 Prospect St, New Haven, CT 06511
10. Pierson-1: 261 Park St, New Haven, CT 06511
11. Saybrook-1: 242 Elm St, New Haven, CT 06510
12. Silliman-22: 505 College St, New Haven, CT 06511
13. Timothy Dwight-22: 345 Temple St, New Haven, CT 06511
14. Trumball- 1: 241 Elm St, New Haven, CT 06511).

population is also included in New Haven's overall population under the 2020 Census guidelines.[154]

4. Voting Eligibility and Legal Residency Status in the Yale College Student Population

Despite the large population and equally large impact of Yale students in Downtown New Haven, many students are likely not eligible or registered to vote in the district. Of the 6,073 undergraduate students that Yale reported to the 2020 Census, nearly one-eighth of the student population were international students who do not meet the citizenship requirements necessary to vote in United States federal, state, or local elections.[155] While the remaining 5,315 students reportedly met the United States citizenship requirement, only 409 students were from Connecticut, representing a mere 7.69% of the overall college population reported as "residents" in Wards 1 and 22 to the Census. In comparison, the largest home state represented in the student population was California with 786 students (14.79%) followed by New York with 784 students (14.75%).[156] Unless the adult[157] out-of-state Yale students newly registered to vote in Connecticut or, alternatively, went through the process of changing their voter registration status from their home state to Connecticut, then as much 92% of the Yale student population would have been ineligible to vote in New Haven in 2020.

Even more, it would not be enough merely to be registered to vote in the *state* of Connecticut. For local elections, in order for college students to be eligible to vote in the local ward-level districts in which they are included by the Census, college students must *specifically* list their college dorm address as their home address when they register to vote. Thus, even the students who are from the state of Connecticut and previously registered to vote in Connecticut would have needed to switch their home

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[154] *Residence Criteria and Residence Situations for the 2020 Census of the United States, supra* note 21, at 1.

[155] *Yale College First-Year Students By Geographic Region*, YALE UNIV., https://yale.app.box.com/s/ldeg5gbau8ssip47xl3wnlm9ui3jvj1g [https://perma.cc/ZU5E-M88M] (last visited Nov. 16, 2022) (During the 2020 Census Year, Yale reported 6,073 undergraduate students based on entering first-year class year data for 2016-2019. Of those, 758 were international students accounting for 12.48% of the overall undergraduate population); *Who Can and Cannot Vote in U.S. Elections*, USA GOV (Mar. 6, 2023), https://www.usa.gov/who-can-vote, [https://perma.cc/FP9X-ZK22].

[156] *Yale College First-Year Students By Geographic Region*, YALE UNIV., https://yale.app.box.com/s/ldeg5gbau8ssip47xl3wnlm9ui3jvj1g [https://perma.cc/ZU5E-M88M] (last visited Nov. 16, 2022).

[157] *Who Can and Cannot Vote in U.S. Elections*, USA GOV (Mar. 6, 2023), https://www.usa.gov/who-can-vote [https://perma.cc/FP9X-ZK22]. (As voter-eligibility also requires citizens to be eighteen-years-old on Election Day (sixteen for some local elections), eligibility for college students will also depend on whether they meet the age requirement on Election Day).

address from their parents' home to their college dorm address. Further, as nearly half of Yale upperclassmen move from Ward 1 to Ward 22 when they leave "Old Campus" and move into their upperclassman "colleges," Yale students would need to update their college dorm address in order to vote in the proper ward where they are counted. While no study has been done to empirically analyze this issue, due to these voter eligibility constraints and burdens, many students are most likely not eligible or choose not to register to vote in the New Haven city elections.

B.   *An Apportionment Base Theory Challenge to the Inclusion of Yale College Students within the City of New Haven 2022 Apportionment Base*

1.   The College Town Advantage Effect of Enumerating Yale College Students in the City of New Haven's Apportionment Base

As this case study demonstrates, counting college students as residents of the districts where their university housing is located is not only inaccurate, but also significantly skews total population data and inflates the voting power and representational strength of eligible voters in college towns. Because Yale's entire college student population is included in the Census' total population count, students who are neither voting, permanent, nor legal residents of New Haven grossly skewed data in Wards 1 and 22. While more data is needed on the actual number of Yale college students within the eligible voting population, the following breakdowns based on the percentage of Connecticut-native students in Spring 2020 illustrates the effect of enumerating Yale college students in the City of New Haven's apportionment base. If only 7.69% of the overall undergraduate student population — the percentage of Connecticut-native students in the spring of 2020 — were voting eligible residents of Ward 1 and Ward 22, respectively, then only 234 students would be eligible to vote in each Ward.[158] Those 234 voting-eligible college students and the voting-eligible portion of the remaining 1,605 non-college student residents in Ward 1 (less than 39.63% of the district) would have complete control over the elections in Ward 1, despite 2,802 additional ineligible students being included in the Ward 1 population. Likewise, the 234 voting-eligible college students and the voting-eligible portion of the remaining 1,457 non-college student residents in Ward 22 would have control over Ward 22 (less than 37.64% of the district), despite the 2,802 additional ineligible students being included in the overall Ward 22 population.[159]

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[158] *See supra* note 155 (Based on an even split of the undergraduate student population of ~3,036 students living in Ward 1. These percentages do not account for the voting-ineligible non-college student population in Wards 1 and 22. These calculations were performed by the author.).

[159] *Id.*; *see also Results — Municipal General Election November 2023*, CITY OF NEW HAVEN, https://www.newhavenct.gov/home/showpublisheddocument/20484/638356450446500000 (last visited Jan. 28, 2024); Breen, *supra* note

There is a strong argument that these practices run afoul of the Equal Protection Clause. Although New Haven's redistricting plan has met the numerical parameters of the equal population requirement, as the deviations between the 30 New Haven Wards do not exceed 10%,[160] compliance with population equalization does not close off apportionment base challenges. When the City of New Haven equalized their wards based on Census population numbers inclusive of Yale's college student population, the *actual* legal and voting residents of Ward 1 and 22 were unfairly advantaged with inflated representational and voting power in comparison to the other 28 Wards neighboring Yale. With the large voting-ineligible student population included in their districts, the voting and representational strength of the voting-eligible population in Ward 1 (39.63%) and Ward 22 (37.64%) would be nearly three times more than the voting and representational strength of the remaining 28 Wards.[161] Thus, this college town advantage effectively denies legal residents and voters in the remaining 28 Wards equal protection under the law. [162]

Moreover, the voter population in the remaining 28 Wards is disproportionately minority and poor, thus this practice *specifically*

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128 (These numbers comport to the data on the voting-eligible population from the November 2023 New Haven city general election. According to the November 2023 New Haven city general election data, Wards 1 and 22 have the lowest voting-eligible population of all of the New Haven city Wards at 991 and 1154 eligible voters, respectively. That means that based on the new total population numbers for Wards 1 and 22, only 21.35% of Ward 1's population (991 out of 4,641 people) and 25.68% of Ward 22's population (1154 out of 4,493 people) were eligible to vote in those districts in the November 2023 election. In comparison, for the wards with the two largest voting eligible populations, Ward 26 (2,562 eligible voters) and Ward 25 (2,524 eligible voters), 60.27% (2,562 out of 4,251 people) and 59.22% (2,524 out of 4,262 people) of their population is eligible to vote. Thus, similarly to the illustrative breakdowns, the voting and representational strength of voters in Wards 1 and 22 are nearly three times more than that of voters in Wards 26 and 25).

[160] *See* Breen, *supra* note 128.

[161] *See supra note* 155; CITY OF NEW HAVEN, *supra* note 159, at 1.

[162] *See* Calvin v. Jefferson Cnty. Bd. of Commissioners, 172 F. Supp. 3d 1292, 1323 (N.D. Fla. 2016) (In a similar challenge to a large, voting-eligible prison population, the Northern District of Florida held that the disparity in voting strength between the district which encompassed the prison and the remaining districts in the body was a clear equal protection violation: "[I]n this case, the inmate population is relatively large, and its inclusion quite clearly denies the denizens of Districts 1, 2, 4, and 5 equal protection of the laws by diluting both their representational and voting strength. The true denizen population of District 3 is about two-thirds the denizen population of the other districts, giving each denizen in District 3 one-and-a-half times the representational strength of the denizens of other districts and. Assuming there are no large pockets of nonvoters in Jefferson County aside from the JCI inmates, the disparity in denizen population also gives the voters in District 3 about one-and-a-half times the voting strength of the voters in other districts. This is clearly an equal protection violation.").

disadvantages minority and poor members of the voting population.[163] As such, the inclusion of Yale college students in the City of New Haven's apportionment base "operate[s] to minimize or cancel out the voting strength of racial or political elements of the voting population" by diluting the voting power of minority and poor voters in the City of New Haven.[164] This vote dilution effect makes the inclusion of college students in New Haven's apportionment base a choice "the Constitution forbids."[165] Consequently, there is a compelling argument that this practice violates the Fourteenth Amendment under One-Person, One-Vote doctrine.

2.   The Distinctive Quantitative and Qualitative Characteristics of College Student Populations: Why a College Student Group Quarters-Based Apportionment Challenge is Particularly Viable

Apportionment Base Theory challenges to the inclusion of college student populations are also viable because of the unique characteristics of college student populations. Under an Apportionment Base Theory, different populations of group quarters should not be viewed within a monolithic group quarters conglomerate. Indeed, the challengers in *Borough of Bethel Park*, as discussed in Section I.B.3,[166] made a fatal strategic error: combining different populations of group quarters within the same challenge. By consolidating these populations, the plaintiffs were unable to address the unique issues that each of these group quarters might pose to government fund allocation, state and local representation, and voting. Thus, this Article proposes two strategic moves that the plaintiffs in *Borough of Bethel Park* failed to do. First, focus exclusively on college student group quarters instead of several group quarters populations. Second, focus exclusively on small municipalities instead of larger governing bodies. The unique characteristics of college student populations within college towns' support the need to address potential violations to the apportionment base requirement under the One-Person, One-Vote doctrine.

i.   College Students Have the Opportunity to be Represented and to Vote Elsewhere

First and most importantly, college students who are ineligible to vote in their college towns have the opportunity to be represented and to vote elsewhere. This fact is distinct from both the historical facts underlying representation and the group characteristics of other group quarters populations which the Court has previously considered. The Court has rejected challenges to apportionment plans based on arguments that only voting-

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[163] Burns v. Richardson, 384 U.S. 73, 88 (1966).

[164] *Id.*

[165] *Id.* at 92.

[166] *See generally* Borough of Bethel Park v. Stans, 449 F.2d 575, 575 (3d Cir. 1971).

eligible individuals should be included within them.[167] In *Evenwel*, the Court rooted its reasoning in the constitutional and historical factual underpinnings of representation in holding that total-population data, as opposed to voter-eligible data, is permissible to use as the apportionment base for a legislative body.[168] The Court found that while Congress had previously considered proposals to limit apportionment of House seats to voting-eligible populations within states, Congress determined that total population, not voting-eligible population, was the "true basis" for apportioning districts as "women, children, and other non-voting classes may have as vital an interest in the legislation of the country as those who actually deposit the ballot."[169]

While the historical representation interests in including non-voters in states' apportionment bases have held firm for centuries, the factual underpinnings of this reasoning have changed dramatically. The Framers determined that population counts of all individuals who were physically present in a state during enumeration was the "true basis" for determining population at a time when it was virtually inconceivable that non-voting individuals could have the *opportunity* to vote and be represented elsewhere. Unlike 1790, today it is possible for individuals to live in one state for an extended period of time, but to be fully represented as legal and permanent members of another state. Additionally, unlike 1790, today it is possible for individuals to be ineligible to vote in the state in which they reside, but to be fully eligible to vote in another state. As the women, children, and non-white populations of 1790 and 1866 were not even considered as full citizens — and thus disenfranchised and limited in interstate movements — these non-voting groups lacked a choice in voting and legal residency.

While these two factual distinctions are not true for all group quarters populations such as incarcerated individuals and individuals who are disenfranchised due to felony convictions, they are true for college students.[170] The modern-day opportunity for college students who are ineligible to vote in their college towns to vote and be represented in their home state is a distinction from the Framers' concept of representation that was recognized by the Supreme Court in *Burns*[171] and the Second Circuit in *Merrill*.[172] Acknowledging that college students have the opportunity to

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[167] Evenwel v. Abbott, 578 U.S. 54, 54 (2016).

[168] *Id.* at 73; *see also supra* Sections I.A.1, I.A.2.

[169] *Evenwel*, 578 U.S. at 66-67.

[170] Fletcher v. Lamone, 831 F. Supp. 2d 887, 896 ("College students and members of the military are eligible to vote, while incarcerated persons are not. In addition, college students and military personnel have the liberty to interact with members of the surrounding community and to engage fully in civic life.").

[171] *See generally* Burns v. Richardson, 384 U.S. 73 (1966).

[172] NAACP v. Merrill, No. 3:18CV1094 (WWE), 2019 WL 4917537, at *4 (D. Conn. Feb. 15, 2019), *aff'd in part, remanded in part,* 939 F.3d 470 (2d Cir. 2019) ("The instant case may be distinguishable from *Evenwel*, which held that a

be represented and vote elsewhere is not only factually accurate, but also pays full adherence to college students' civil rights and civil liberties today. The disenfranchised and unempowered women, children, and enslaved individuals of 1790 were compulsorily included within the apportionment base of their husbands, fathers, and enslavers when political representation was first conceptualized. Today, college students have a choice: A choice of where to establish their legal residence, a choice of where to vote, and — until recently — a choice of where to be counted in the Census. It is this opportunity for college students to be represented and vote elsewhere that makes their inclusion in college towns' apportionment bases as group quarters so constitutionally wrought.[173] Therefore, Apportionment Base Theory challenges to the inclusion of college students in college towns' population are not just compelling, but necessary.

ii. *The Quantitative and Qualitative Characteristics of College Students Call for Population Adjustments*

In addition to the changed factual underpinnings of representation and voting, there are several key quantitative and qualitative characteristics of college populations that call for meaningful adjustments. While these claims can be applied to both public and private college students, these claims are particularly true for college students attending private universities with significant on-campus residency. First, at the local and municipal level, college student populations can be a significantly large portion of a district's overall population. Some college towns double in population when students arrive.[174] In New Haven, Yale students comprised nearly two-thirds of Wards 1 and 22 in 2020. Thus, the inclusion of college student group quarters in New Haven's apportionment base has a greater potential to skew total population data and the inclusion of voting-ineligible

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redistricting plan had appropriately used total population census numbers in the context of an action asserting that the Texas legislature should draw legislative districts based upon the citizen-voting-age-population" as "[t]he instant case implicates the plausible compromise of fair and effective representation due to the Redistricting Plan's reliance upon total population census data when, by state law, incarcerated individuals are not even considered residents of their prison location."); CONN. GEN. STAT. § 9-14.

[173] *See also Evenwel*, 578 U.S. at 57-58; Davidson v. City of Cranston, Rhode Island, 837 F.3d 135, 141 (1st Cir. 2016) (Moreover, while the historical and constitutional theories underlying the 1790 concept of representation has been used to support the notion that legislators are *not required* to exclude ineligible voters from their apportionment base to *comply* with the Fourteenth Amendment,"*Evenwel* did not decide the precise question [of the permissibility of including certain groups within an apportionment base]." Further, *Evenwel* did not ever reach the question of whether states were *allowed* to equalize districts based on adjusted voter-eligible data, in lieu of total population data that includes ineligible populations).

[174] Persily *supra* note 19, at 786.

and non-legal resident students in the city's apportionment base has the potential to produce a more severe dilutive effect on neighboring districts.

Second, many college students are not permanent residents of their college town. Instead, the college student population generally comprises a substantial temporary population. In New Haven Wards 1 and 22, while the college student population is typical present for the majority of the year, most individual students only live in New Haven temporarily for the length of their degree program.[175] Following graduation, the vast majority of Yale students leave Connecticut and live their lives away from the New Haven community.[176] The Court has recognized that the "continuing presence" of substantial temporary populations in a district can create "special population problems" in that district.[177] In these special cases, failing to adjust Census total population numbers would lead to "grossly absurd and disastrous results"[178] as the resulting Census data would be "a substantially distorted reflection of the distribution of state citizenry."[179] Including students in the City of New Haven apportionment base to establish district lines for the next ten years would likewise substantially distort the distribution of state citizenry as it enshrines a largely out-of-state and temporary population in ward population numbers.[180] As such, the inclusion of Yale students within New Haven's apportionment base would be a "distorted reflection" of the New Haven citizenry.[181]

Third, many non-voting, non-legal resident college students lack a meaningful representational nexus to their college towns. Representational nexus, or the "relationship between an official and an individual denizen,"[182] has been considered by courts in determining whether certain populations can be properly excluded from apportionment bases.[183] An

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[175] *See Yale College First Destinations*, YALE UNIV. OFF. OF CAREER STRATEGY, https://perma.cc/9E9X-HDQV (last visited Nov. 16, 2022).

[176] *Id.* (Based on Yale University data for students graduating in the 2020-2021 academic year, only 15.21% of graduating students stayed in Connecticut following graduation. The other 84.79% of students moved away).

[177] *Burns*, 384 U.S. at 91-94.

[178] *Id.*

[179] *Id.* at 94.

[180] *Id.* at 94-95.

[181] *Id.*

[182] Calvin v. Jefferson Cnty. Bd. of Comm'rs, 172 F. Supp. 3d 1292, 1310 n.18 (N.D. Fla. 2016).

[183] *See, e.g.*, *id.* at 1321-26 (holding that as prisoners did not have a meaningful representational nexus to the city in which they were incarcerated, they could be properly excluded from the city's apportionment base despite their inclusion in the city's total population count under the Census); Pub. Integrity Alliance, Inc. v. City of Tucson, 805 F.3d 876, 881 (9th Cir. 2015) (finding a representational nexus between the city of Tucson and its council member). *But see* Davidson v. City of Cranston, 837 F.3d 135, 145 n.5 (1st Cir. 2016) (noting that "the Supreme Court has never adopted a 'representational nexus' analysis" as the constitutional standard to examine apportionment base cases).

individual denizen's representational nexus to a governmental official is not merely a matter of their physical location within a representative's district. Instead, the question of whether a denizen has a meaningful representational nexus is determined by "the ability of a representative to *meaningfully* affect that person's life."[184] Thus, representational nexus analysis may consider whether "an individual college student indicates that he feels a particular connection or attachment to the state of his parental home, registers to vote in that state, and accordingly regards it as his home."[185] Factors such as these would indicate a weak representational nexus to the college student's college town, and a strong representational nexus to the college student's home state. An individual's representational nexus to a governmental body is an important element in the conversation of electoral and representational equality as many representational benefits and potential representative harms "only occur to people who are *meaningfully affected* by a representative's actions."[186] As such, courts have held that an apportionment base for a legislative body that includes "a large number of nonvoters who [] lack a meaningful representational nexus with that body" and packs those voters into "a small subset of legislative districts," violates the Equal Protection Clause by "impermissibly dilut[ing] the voting *and* representational strength of denizens in other districts."[187]

Generally, local council members have little legal or practical authority to directly or meaningfully affect the lives of non-voting, non-legal resident college students attending private universities with their policies.[188] For example, many state policies that regulate important aspects

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[184] *Calvin*, 172 F. Supp. 3d at 1310 (The *Calvin* court described a lack of meaningful representational nexus as follows: "If the representative can't make decisions that meaningfully affect me; if the representative can't act as my ombudsperson because the governing body to which she belongs can't do anything for me; if I'm not receiving services from the governing body—under these circumstances, there's no representational nexus18 between the representative and me.") (emphasis added). *Id.* at 1318-19 (The Calvin court noted that while many prison populations are "mostly immune to the policy choices made at the county level," "[college students and military personnel] have a much more substantial connection to, and effect on, the communities where they reside" in part because of their *opportunity* to interact and engage with their surrounding community." While it is true that college students are much more connected to their surrounding districts than many prison populations due to their ability to "interact" and "engage" with their local communities, this physical placement and the ability to interact does not necessarily imply a strong representational nexus in terms of whether the local policymakers can meaningfully affect their lives with their policies).

[185] Borough of Bethel Park v. Stans, 449 F.2d 575, 579 (3d Cir. 1971).

[186] *Calvin*, 172 F. Supp. 3d at 1310 (emphasis added).

[187] *Id.* at 1315.

[188] *See, e.g.*, Fred Thompson & William Zumeta, *Effects of Key State Policies on Private Colleges and Universities: Sustaining Private-Sector Capacity in the Face of the Higher Education Access Challenge*, 20 Econ. Educ. Rev. 517, 517

of public school education and administration are not mandatory for private schools.[189] In Connecticut, there are no state policies requiring private schools to be accredited, registered, licensed, or approved by the state. Private school teachers are not required to be certified by the state and no state policy regulates the length of the school year and day, technology, or testing requirements. Many of the state curriculum policies are likewise, merely permissible and not mandatory for private schools.[190] Thus, local and state policymakers have decreased authority to meaningfully affect the day-to-day lives of private college students living on college campuses through their policies.

Fourth, relatedly, unlike other "non-voting residents," non-voting, non-legal resident college students attending private colleges do not have a comparable stake in their college town's public policy or public benefits. The Court has recognized that non-voting residents in a district "have an important stake in policy debates" such as "a strong public-education system" and in "receiving constituents services" such as "help navigating public benefit bureaucracies."[191] These stakes in public policies and public benefits, the Court believes, makes the inclusion of individuals who are unable to vote but are affected by these public goods interests within a local apportionment base reasonable.[192] However, unlike other populations of non-voters, such as children,[193] non-voting, non-legal resident private college students do not have the same *public* policy and *public* benefit interests because they attend a *private* institution. Yale University maintains a private governance and policy-making body that is supported by a

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(2001) (In examining the relationship between key state policy variables and the competitive position of private colleges, researchers found that elite private schools are "nearly impervious to state policy." State policy was further found to have only an indirect effect on large and moderately selective private schools, such as public institution density and low public prices diverting students from private to public school options.).

[189]*See generally Connecticut State Regulations*, U.S. Department of Education (August 18, 2016), https://www2.ed.gov/about/inits/ed/non-public-education/regulation-map/connecticut.html (Connecticut imposes the most regulations on private schools in the areas of health and safety, many of which conform to federal regulations. Connecticut does, however, make many of their state policies optional for private schools, the adoption of which typically affords private schools' benefits.).

[190] *Id.*

[191] Evenwel v. Abbott, 578 U.S. 54, 74 (2016) (emphasis added).

[192] *Id*.

[193] *Id.*

private advisory body.[194] Yale maintains a private administration,[195] operates on a private budget,[196] and provides private student services such as the Yale police force.[197] Due to private college students' heightened reliance on private services, policies, government, and benefits while they are residents in their college town, they do not have the same stake in public policies and benefits as do the non-student legal and permanent residents of a locality.[198]

Moreover, Yale College maintains its own student-led government system, with elected representatives from each of the fourteen Colleges.[199] The representatives in the Yale College Council take on many of the same responsibilities for Yale College students as local councilmembers do for denizens of their district including creating policies, planning events, serving as liaisons between students and Yale's administration, and responding to students' concerns and needs.[200] In essence, local government systems situated in college towns that encompass private college group quarters do not serve the same rulemaking or representative function for non-voting, non-legal resident, non-permanent college students as they do for voting, legal resident, and permanent citizens.[201] As a result of Yale's private government structure, the majority of student concerns such as housing and

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[194] *Leadership & Organization*, Yale College, https://www.yale.edu/about-yale/leadership-organization (last visited Feb. 1, 2024) (Yale's governance and policy-making body is "formally known as the Yale Corporation.").

[195] *See, e.g.*, *Yale College Administrative Officers*, Yale College Programs of Study 2023-2024, https://catalog.yale.edu/ycps/administrative-officers/ (last visited Feb. 1, 2024).

[196] *Overview of Yale's Budget*, Yale College, https://www.yale.edu/funding-yale-home/overview-yales-budget (last visited Feb. 1, 2024).

[197] *Yale Police Department*, It's Your Yale, https://perma.cc/98CB-ULLX (last visited Feb. 1, 2024).

[198] This is particularly true for private colleges which, like Yale, have a large proportion of their student body in University housing, i.e., colleges that function as college student group quarters.

[199] *Senate*, Yale College Council, https://www.ycc.yale.edu/executive-board-copy (last visited Feb. 1, 2024); *see also Our Mission*, Yale College Council, https://www.ycc.yale.edu/mission (last visited Feb. 1, 2024) (Among other responsibilities, Yale College Council representatives "propose policies to better the quality of student life," "plan and sponsor student body-wide events," "provide funding to student organizations," and "collaborate with Yale and New Haven-based advocacy organizations.").

[200] *Id.*; *Structure*, Yale College Council, https://www.ycc.yale.edu/structure-1 (last visited Feb. 1, 2024).

[201] *See generally supra* note 159 (It is notable that Wards 1 and 22, the two wards that are vastly comprised of Yale college students, have extremely low voter turnout. In the November 2023 New Haven general election, Ward 1 had the lowest turnout of all the wards at eleven percent, and Ward 22 ranked in the bottom half of ward voter turnout at twenty-two percent. Both wards were below the New Haven city voter turnout average of twenty-five percent.).

curriculum will go through Yale's private channels, not the local government network. Thus, in many instances, Yale College students have a stronger representational nexus with their student government representatives and University administrators than they do with the Wards 1 and 22 Board of Alder representatives.[202] More importantly, college students registered back at their home communities have representation elsewhere, thus protecting their "equitable and effective representation" interests and giving them an opportunity to participate in the democratic process.[203] These factors indicate that the large population of non-voting, non-legal resident Yale college students are not meaningful affected by their local policymakers and have a meaningful opportunity to be represented, to vote, and/or to be enumerated in their home communities. Therefore, this large college student population lacks a representational nexus to New Haven.

Fourth, perhaps the most unique aspect of college student enumeration during the 2020 Census period was the change in the "usual place of residence" criteria.[204] Unlike previous Census years, an overwhelming amount of the college student population was counted at their college institutions,[205] despite students not actually residing in their college towns during the Census enumeration period. While it would be easy to disregard this fact as a by-product of pandemic chaos, courts have previously upheld plans that included non-voting group quarters in part because there was no evidence that they were counted in places where they were not *actually* residing.[206] Unlike previous Censuses, the 2020 Census included

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[202] *See* Yash Roy & Charlotte Hughes, *Here's What You Need to Know About the Board of Alders, New Haven's Legislative Council*, YALE DAILY NEWS (Sept. 20, 2022, 11:55 PM), https://yaledailynews.com/blog/2022/09/20/heres-what-you-need-to-know-about-the-board-of-alders-new-havens-legislative-council/ (Yale college students' attenuated representational nexus with the New Haven Board of Alders does not imply that Yale students are not, still, able to access their Board of Alder members. As the *Evenwel* Court made clear, individuals who are non-voting still have a stake in public matters. As inhabitants of Wards 1 and 22, Yale college students, even those who are not registered to vote in the district, can still attend city meetings and express their concerns to Board of Alder members.).

[203] *See* Evenwel v. Abbott, 578 U.S. 54, 74 (2016); *supra* Section III.B.2.a.

[204] *Supra* Section I.C.1.

[205] *See supra* note 9.

[206] Davidson v. City of Cranston 837 F.3d 135, 137 (1st Cir. 2016) (In *Davidson*, plaintiffs challenged the City of Cranston's inclusion of an entire prison population into one of six municipal wards (Ward 6). The lower court held that the inclusion of the voting-ineligible prison population in apportionment base violated "One-Person, One-Vote" as it inflated the voting strength of eligible voters in Ward 6 while diluting the voting strength of voters in neighboring wards. The First Circuit reversed and rejected the challenge, holding the legislature's reliance on unadjusted Census total population data was constitutional. In rejecting the challenge, the First Circuit noted "[t]here has been no allegation that the Census

thousands of students in college towns who were not actually living there. This inaccurate representation of students' residences not only impacts college towns, but also draws funding away from the localities and states that *actually* housed students during the pandemic — all of which were suffering under the weight of the global crisis.

Accordingly, the inclusion of Yale college students, and college students in similarly situated college towns, within the city's total population undermines students choice to vote and be represented elsewhere, as well as skews population data based on a large population of substantially temporary non-voters who lack a meaningful representational nexus to their college town's greater governing body, do not have a stake in their public benefits or policy, and were not actually physically present in these cities during the 2020 Census period. Under these distinctions and facts, the rationale for including voting-ineligible college students in apportionment bases cannot stand against the college town advantage effect that college student enumeration created in 2020. Further, the college town advantage given to the white, wealthy enclaves of colleges by including college students within their wards' apportionment base violates the voting and representational equal protection rights of the comparatively poor and minority residents of the twenty-eight neighboring wards. Therefore, there is a compelling and viable case that the inclusion of college students in certain college town's apportionment bases violates the One-Person, One-Vote doctrine under the Fourteenth Amendment.

IV.   BENEFITS AND LIMITATIONS OF COLLEGE STUDENT GROUP QUARTERS CHALLENGES

A.   *Different Group Quarter Populations: Apportionment Base Theory Challenges to Prison Populations*

While Apportionment Base Theory challenges to other populations of group quarters, specifically prison populations, have received mixed results, that does not foreclose the viability of a challenge to the inclusion of college group quarters within apportionment bases. Instead, litigation surrounding prison-based gerrymandering and an impending circuit split has created a ripe ground for challenging college student-based gerrymandering. There have been several key federal cases that have analyzed prison gerrymandering claims in the past decade. While courts have affirmed legislative decisions to exclude prison populations from apportionment bases,[207] courts have been divided on whether to strike down

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has mistakenly assigned the ACI inmates to a place that was not their residence at the time the Census was conducted.").

[207] *See, e.g.*, *id.* at 144 (citing *Evenwel*, 578 U.S. at 1124 n.3 (In *Evenwel*, the Court noted that "four states (California, Delaware, Maryland, and New York) 'exclude inmates who were domiciled out-of-state prior to incarceration.'")).

apportionment plans that include prison populations when confronted with Fourteenth Amendment challenges.

In the 2016 case *Calvin v. Jefferson County Board of Commissioners*, the district court for the Northern District of Florida became the first federal court in the nation to strike down an apportionment scheme as unconstitutional under the Fourteenth Amendment due to the inclusion of a prison population.[208] That same year, the First Circuit in *Davidson v. City of Cranston* reached the opposite conclusion on a similar challenge to the Cranston, Rhode Island city ward redistricting plan.[209] The divergent outcomes in *Calvin* and *Davidson* highlight courts' split approaches to analyzing prison-based malapportionment claims under the One-Person, One-Vote doctrine. These divergent judicial approaches could culminate into a circuit split in the upcoming case before the District Court for the District of Connecticut, *NAACP Connecticut State Conference v.*

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[208] *Litigation*, PRISON POLICY INSTITUTE, https://perma.cc/HHZ4-RVU7 (last visited Mar. 28, 2023); Calvin v. Jefferson Cnty. Bd. of Commissioners, 172 F. Supp. 3d 1292, 1298-1315 (N.D. Fla. 2016) (In *Calvin*, the district court for the Northern District of Florida found the inclusion of a prison population within Jefferson County's apportionment base unconstitutional under the One-Person, One-Vote doctrine. As the prison population represented a "large number of nonvoters who lack[ed] a meaningful representational nexus with that body" and the prisoners were "packed into a small subset of legislative districts," the inclusion of the prisoners diluted the voter power *and* representational strength of the other Jefferson County districts as voting-eligible District 3 members would enjoy inflated voting strength and the permanent residents of District 3 would have more representational strength. Thus, the District Court struck down the apportionment plan under One-Person, One-Vote, requiring the Jefferson County legislature to adjust total population numbers to account for the voting-eligible prison population.).

[209] *Davidson*, 837 F.3d at 144 (Overturning a lower court decision that struck down the city's apportionment plan due to the inclusion of a local prison population, the First Circuit observed the *Evenwel* principle that adjustments to the Census total population data to exclude voting-ineligible prison populations are "optional." In doing so, the First Circuit sanctioned the City of Cranston's use of unadjusted Census data that includes prison populations as a "norm, as practiced by the large majority of states."); *Davidson v. City of Cranston*, 188 F. Supp. 3d 146 (D.R.I.), *rev'd sub nom. Davidson v. City of Cranston,* 837 F.3d 135 (1st Cir. 2016) (In the lower court case, a group of City residents and voters sued the City of Cranston, challenging its ward redistricting plan, in which the entire population of a state prison was placed within one of the city's six wards. The plaintiffs argued that the inclusion of the State's entire prison population (3,433 prisoners) into one district resulted in dilution of the voter strength and political influence in the remaining districts. The District Court held that the City's redistricting plan violated the Fourteenth Amendment Equal Protection Clause under One-Person, One-Vote and granted summary judgment for the Plaintiffs.).

Merrill,[210] which falls under the appellate jurisdiction of the Second Circuit.[211] The variable nature and unsettled approaches to prison population apportionment claims have opened the door for novel group quarters-based challenges. Further, the aggregated challenges to the inclusion of multiple subcategories of group quarters should serve as a strong indication for the need for legislative and executive action around Census data adjustments to account for the effect of different group quarters within apportionment bases.

B. A Way Forward With College Students

This Article argues that the inclusion of voting-ineligible college students in certain college town's apportionment bases violates the One-Person, One-Vote doctrine under the Fourteenth Amendment. This critique for college student enumeration lies in legislators' strict reliance on *unadjusted* Census data for *apportionment* purposes. There are two main solutions to addressing college student enumeration problems: (1) meaningful adjustments to Census total population data, or (2) amendments to the Census Bureau's procedures for enumerating college students. In determining which solution is most appropriate, there are three key considerations that help support the case for challenges to college student-based apportionment and answer the question of what enumeration and apportionment practices should happen instead: (1) college student enumeration for purposes of federal allocation of funds; (2) college student enumeration for purposes of the "Actual Enumeration"[212] of citizens; and (3) patterns of college student choice in where they vote. This section examines

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[210] NAACP v. Merrill, 2019 WL 8016631 (D. Conn.).

[211] *Id.* at *3-4 (In denying Connecticut's motion to dismiss a challenge to the inclusion of prison populations in the Connecticut Legislature's 2011 Redistricting Plan, the court noted that the prison population vote dilution claim in *Merrill* may be distinguishable from the Supreme Court precedent used to uphold prison-gerrymandering in *Davidson*.); NAACP v. Merrill, 939 F.3d 470, 477-78 (2d Cir. 2019) (In affirming the lower court's dismissal, the Second Circuit rejected three of Connecticut's arguments to support their motion. First, the Second Circuit rejected Defendants' argument that plaintiffs failed to meet the *Evenwel* "10% threshold" to create a prima facie case of discrimination, holding that prima facie showing of discrimination is not *required* at the pleading stage and "the 10% threshold is not a safe harbor." Second, the Second Circuit held that under *Burns* "redistricting decisions are "subject to constitutional challenge . . . upon a demonstration that the . . . apportionment . . . would operate to minimize or cancel out the voting strength of racial or political elements of the voting population." Third, the Second Circuit rejected defendants' argument that the First Circuit case *Davidson v. City of Cranston*, "which involved facts that Defendants contend are *substantially similar* to those presented [in this case]," did not foreclose plaintiffs' claim as "[a] decision of the First Circuit, while potentially a persuasive authority as to the merits of the case is not "a prior decision of the Supreme Court" that "foreclose[s]" plaintiffs' claim.).

[212] U.S. CONST., art. I, § 2, cl. 3.

these three considerations and discusses the two solutions in light of that examination.

First, it is true that the presence of college students in a college town increases the demand for public services on a whole and thus, a state's total population for federal-allocation purposes probably should reflect large student populations who generally inhabit the area.[213] Students can play an integral role in their local communities by integrating into the community and utilizing public resources such as public roads, public funds, and public services, all of which have an effect on the public demands of a college town.[214] While there is a debate as to whether students should be counted as members of their home states as opposed to members of their college towns for purposes of correctly allocating federal resources and avoiding over-resourcing colleges towns and under-resourcing students' home-towns, this issue is separate from that of college student enumeration for *electoral* and *representational equality* purposes. This creates a tension without a clear answer between the two interests underlying One-Person, One-Vote.[215]

Second, college students must be counted somewhere. Failing to accurately count college students as a population or adopting a policy that could potentially under-enumerate college students would be wholly unacceptable to democratic principles. With over 19.4 million students attending college in the fall of 2020,[216] it is paramount that college students are included and reflected in the Census. In this vein, the under-enumeration concerns that underlay the Census Bureau's 1950 procedural amendment are valid and surely must be taken into consideration when adopting residency criteria.[217] While there is a debate as to whether the concept of "usual residence" for college students should translate to their parental home or their college town, this issue, too, is separate from that of college student enumeration for purposes of electoral and representational equality. Once again, there is a tension between the two equality values that seems difficult to bridge.[218] A potential side-effect of successfully

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[213] Borough of Bethel Park v. Stans, 449 F.2d 575, 580 (3d Cir. 1971).

[214] *See* Adam Johnson, *Wisconsin's 3/5 Compromise: Prison Gerrymandering in Wisconsin Dilutes Minority Votes to Inflate White Districts' Population*, 47 MITCHELL HAMLINE L. REV. 479, 492-93 (2021).

[215] *See* Calvin v. Jefferson Cnty. Bd. of Commissioners, 172 F. Supp. 3d 1292, 1304 (N.D. Fla. 2016) ("Only a handful of cases have dealt with the vexing problem of what to do when districts are drawn in such a way so as to serve one principle but not the other—that is, when districts are drawn in such a way that the number of voters is the same in each, but the number of total people varies by a great amount (or the other way around).").

[216] *Supra* Section I.C.1.

[217] *Borough of Bethel Park*, 449 F.2d at 579.

[218] *See, e.g.*, Robert Groves, *So, How Do You Handle Prisons?*, DIRECTOR'S BLOG, U.S. CENSUS BUREAU (Mar. 1, 2010), https://perma.cc/D8HP-7GPJ (The Census Bureau acknowledged that while their guidelines for "usual residence" are aimed at enumerating each person in "some" location to satisfy the "need to

litigating a college student group quarters challenge at the Ward level would be the removal of college student populations from that district. Under the current enumeration procedure, while the removed, non-voting students would still have the opportunity to be represented and vote elsewhere if they were removed from their college town's apportionment base, they could effectively be removed from all apportionment bases, including the ones where they were actually domiciled and voted, if there is not appropriate coordination between their college town district and their home district. This potential litigation effect, though unintended, could open a new series of issues for under-enumeration of college populations under the current Census group quarters policies and the legislature's strict reliance upon the resulting data.

Third, while college students are generally permitted to maintain legal residency and vote in their home state, college students are also generally permitted to instead establish legal residency and vote in their college town. While having a large population of students who are domiciled and registered to vote elsewhere raises serious concerns for the reasonableness of including students in local districts, the reasonableness issue is easily resolved if students, in the alternative, become domiciled and voted in their college towns. While college students' *ability* to establish residency and vote in their college town is not dispositive to the legislature's ability to adjust their population numbers, the actual place where a student *chooses* to be a legal resident and vote matters.[219] Thus, while adjusting college student population data does not affect the voting eligibility of college students,[220] attention should be paid to where college students

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reapportion the House across states and then to redistrict the states," their particular method of enumerating certain groups quarters can led to some "logistical" problems. In the alternative of defining "usual residence" of prisoners as the location of the prison, the Census Bureau has offered several optional definitions for "usual residence" including: "Where the prisoner lived immediately prior to the arrest; Where the prisoner lived at the time of the arrest; Where the prisoner lived at the time of the sentencing; Where the prisoner's former household now lives; and Where the prisoner wants to live after exiting the institution." According to the Bureau, "some state and local governments might want to adjust census data to remove or relocate (to their pre-prison residences) prison population.").

[219] *See* Burns v. Richardson, 384 U.S. 73, 95-96 (1966) (In *Burns*, the Court found the use of registered voters for apportionment (and the exclusion of military members from the apportionment base) to be constitutionally valid despite there being: (1) nothing in the State Constitution or Hawaii statutes per se excluding members of the armed forces from establishing legal and voting residency in Hawaii; (2) no efforts by Hawaii to disenfranchise military members or other groups of citizens; and (3) strong voter registration encouragement from the Hawaii government, the military had not be "excluded improperly" from the apportionment base.).

[220] *See* RESIDENCE CRITERIA AND RESIDENCE SITUATIONS FOR THE 2020 CENSUS OF THE UNITED STATES*, supra* note 21, at 1; *Voting as a College Student*, VOTE.GOV, https://ssg-stage.vote.gov/voting-college-student (last visited Mar.

actual vote. These considerations of college student voter eligibility and political activity will depend not only on college students' personal practices and preferences, but on the governing state's policies.[221] This point, then, is extremely dependent on inquiries made in the Census data, and these inquiries drive the answer to the question of what *should* happen instead.

The importance of accurately capturing college student populations within Census data leads to the first solution to college student enumeration for apportionment purposes: practical and meaningful legislative adjustments to Census data. There is no constitutional requirement that prevents legislatures from adjusting Census total population numbers. With various considerations to be taken when it comes to who should be included within an apportionment base, Census total population data should be the *start* of the apportionment base inquiry, not the *end*. An analysis of college students' behaviors around residency and voting and meaningful adjustments in response to this data can ensure that college students are counted in the correct place, federal resources are properly allocated, and college students are included in Actual Enumeration. Further, a critical analysis of data surrounding college student populations can help ensure that legislatures are paying full adherence to college student choice in representation and voting. Legislative adjustments to account for certain non-legal resident or voting-ineligible group quarters have been upheld under the same rational basis standard applied to apportionment schemes that rely strictly on unadjusted Census total population data.[222] Thus, legislative adjustments to Census total population data is a permissible approach to college student group quarters.

Several states have already elected to adjust Census data in a meaningful way.[223]

> The Constitutions and statutes of ten states — California, Delaware, Hawaii, Kansas, Maine, Maryland, Nebraska, New Hampshire, New York, and Washington — authorize the removal of certain groups from the total-population apportionment base. Hawaii, Kansas, and Washington exclude certain non-permanent residents, including nonresident members of the military. California, Delaware, Maryland, and New York exclude inmates who

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15, 2024) (Indeed, the place where college students are counted in the Census has no effect on where they are eligible to vote. Voting-eligible college students have a choice to vote either in their hometown or in their college town, regardless of where they are counted in the Census.).

[221] *Id.* at 92; *Borough of Bethel Park*, 449 F.2d at 580-83 (The Third Circuit held that the voting and representation issues that could be created from the *reality* of where college students *actually* registered to vote and designated as legal residents were issues for the states.).

[222] *See supra* Section III.A.2.

[223] Evenwel v. Abbott, 578 U.S. 54, 60 (2016).

were domiciled out-of-state prior to incarceration. The Constitutions of Maine and Nebraska authorize the exclusion of noncitizen immigrants, but neither provision is 'operational as written.'[224]

As these states demonstrate, solving key issues of group quarters apportionment could be a matter of passing a statutory amendment or updating a state constitution.

A second solution could lie within the Executive Branch: amendments to the Census Bureau's procedures for enumerating college students. As the vast majority of states strictly rely on Census total population data to identify an apportionment base and equalize their districts, the underlying procedures that the Bureau adopts to enumerate college students is critical to their inclusion in states' apportionment plans. While successfully challenging the Bureau's decision would be unlikely, advocacy and research around policy changes for the "usual place of residence" determination is necessary to combat issues surrounding group quarters data. Additionally, other kinds of Census data that are collected more frequently could be used to help legislators account for fluctuating student populations over a ten-year period. The Census Bureau oversees many inter-Census projects, including five-year and biannual surveys which could provide more detailed and accurate data on student population factors such as students' legal residence statuses, voting registration habits, and demographic information.[225]

While both these legislative and executive branch solutions could make a far-reaching impact in addressing college student populations and group quarters enumeration in general, the administrative and political obstacles over passing and enforcing new local, state, and federal policies would make these changes slow, if not altogether unrealistic. Thus, in the interim and immediate aftermath of the 2020 Census period and resulting redistricting cycle, litigation can be a key tool in effecting these meaningful adjustments to Census total population data. By requiring states to take a meaningful look at the data on student voting and representation, we can safeguard the founding values of electoral and representational equality, pay full adherence to college student choice within the political process,

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[224] *Id*. at 60 n.3.

[225] *See, e.g.*, *American Community Survey 5-Year Data (2009-2021)*, U.S. Census Bureau (Dec. 8, 2022), https://perma.cc/VFW7-N7UZ ("The 5-year estimates from the ACS are 'period' estimates that represent data collected over a period of time. The primary advantage of using multiyear estimates is the increased statistical reliability of the data for less populated areas and small population subgroups."); *Introduction and History of the AHS Survey*, U.S. Census Bureau, https://perma.cc/S76J-4JW7 (last visited Apr. 11, 2023) ("The AHS is conducted biennially between May and September in odd-numbered years. HUD sometimes adjusts this schedule and/or sample depending on budget constraints. While national data are always collected, typically no more than 30 metropolitan areas are sampled in one survey year, due to budget constraints.").

and ensure that all citizens receive equal protection of the law under the One-Person, One-Vote doctrine.

CONCLUSION

Inflating the voting power and representational strength of white, wealthy college towns and diluting those of the disadvantaged communities nearby undermines our principles of representational equality, electoral equality, and equal protection of all people in violation of the Fourteenth Amendment. This challenge to the New Haven 2022 Redistricting Plan under an Apportionment Base Theory, and replicated challenges to similarly situated college towns' redistricting plans, could provide a strong incentive for legislators with large group quarters in their districts to take a critical look at the data behind the populations used for equalizing districts. Additionally, this novel challenge to college student group quarters could open new avenues for further group quarters apportionment base challenges under the One-Person, One-Vote doctrine. This legal strategy and these proposed legislative and executive policy changes are important steps in safeguarding equal voting rights and representational strength for all citizens under the One-Person, One-Vote doctrine through critical analysis of apportionment bases.

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