

COURT OF APPEALS
STATE OF NEW YORK

A.D. Third Dept. Docket
No. 98700

-----X
IVEY WALTON, et al. :
: :
Appellants, :
: :
-against- :
: :
NEW YORK STATE DEPARTMENT :
OF CORRECTIONAL SERVICES, et al. :
: :
Respondents. :
-----X

BRIEF OF
AMICI CURIAE
BETSY GOTBAUM,
PUBLIC ADVOCATE FOR THE CITY OF NEW YORK
AND
**GALE BREWER, YVETTE D. CLARKE, BILL DE BLASIO, JAMES
GENNARO, ROBERT JACKSON, LETITIA JAMES, G. OLIVER
KOPPELL, MIGUEL MARTINEZ, HIRAM MONSERRATE,
ANNABEL PALMA, DIANA REYNA, LARRY B. SEABROOK,
HELEN SEARS AND KENDALL STEWART,**
MEMBERS OF THE
NEW YORK CITY COUNCIL
IN SUPPORT OF APPELLANTS

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Preliminary Statement

An inherent responsibility of both the Public Advocate for the City of New York and of the New York City Council is to challenge State policies that unfairly burden the City's constituents. To this end, Betsy Gotbaum, Public Advocate for the City of New York, together with several members of the New York City Council, respectfully submit this brief as *amici curiae* and request that the Court of Appeals reverse the decision of the Appellate Division in the matter of Walton v. New York State Department of Correctional Services and MCI.

Interest of Amici Curiae

Amici are New York City elected officials who support reversal of the decision made in the matter of Walton v. New York State Department of Correctional Services and MCI. *Amici* are concerned that their constituents are forced to pay inflated telephone rates authorized by the State in order to communicate with loved ones in prison. Most prisons are located outside New York City and too far for City residents to regularly visit. Thus, telephone communication is often the only practical method of contact between inmates and their families in New York City. Moreover, the excessive phone charges harm New York City's most vulnerable neighborhoods and residents. Given that two-thirds of the State's prison population is from New York City and the majority of prisoners come from low-income families and impoverished neighborhoods,¹ the imposition of exorbitant phone rates falls on those least able to afford this monopolistic pricing. Beyond economics, this matter involves issues pertaining to family preservation, child welfare and community development.

Amicus **Betsy Gotbaum is the Public Advocate for the City of New York**. She is an independently elected citywide official upon whom the City Charter confers various enumerated powers. The Public Advocate stands (i) as a successor to the Mayor in the event the Mayor is unable to serve or the office is vacated; (ii) as a permanent ombudswoman between the public and City agencies; and (iii) as a Trustee of New York City Employees' Retirement System. City Charter §10(a)-(b); §24(f)-(m); Administrative Code §13-103 (b)(2). Furthermore, the Public Advocate for the City of New York makes appointments to the City Planning Commission, New York City Transit Authority Advisory Council and the Citywide Council on Special Education. City Charter §192(a); Public Authorities Law §1204-a; Education Law §2590-b.

Public Advocate Betsy Gotbaum has long been a voice for New York City's most vulnerable populations. She issues policy reports and sponsors legislation that protect and enhance the general welfare of these constituents, focusing on child welfare, hunger, and economic stability. For example, Betsy Gotbaum has advocated for improved access to the Federal Food Stamp Program by recommending such measures as shortening the

¹ Testimony of Peter Wagner, Executive Director of Prison Policy Initiative, before Assembly Standing Committee on Governmental Operations and Assembly Legislative Taskforce on Demographic Research and Reappointment. October 17, 2006.

application for benefits and extending the hours of operation of the City's food stamp offices. Not only has she sought these changes on behalf of the individual, but the Public Advocate also identified the economic impact of the lost Federal dollars on low-income communities.

***Amici* Members of the New York City Council, Gale Brewer, Yvette D. Clarke, Bill de Blasio, James Gennaro, Robert Jackson, Letitia James, G. Oliver Koppell, Miguel Martinez, Hiram Monserrate, Annabel Palma, Diana Reyna, Larry B. Seabrook, Helen Sears, and Kendall Stewart.** The Council is an equal partner with the Mayor in the governing of New York City. The Council monitors the operation and performance of City agencies, makes land use decisions and has sole responsibility for approving the City's budget. City Charter § 29; General Municipal Law Art. 15-16, Private Housing Finance Law Art. 5, City Charter §§197-d, 363, 3020; City Charter §§247, 254-56. The City Charter empowers the Council to adopt the laws governing the City. City Charter §28. Members of the New York City Council are the stewards for the issues that impact their constituents in their districts.

Most of the Council's legislative work is conducted in committee. The New York City Council is comprised of 35 Standing Committees, each devoted to a particular City or State issue. Relevant Committees which oversee the above-mentioned issues of child welfare, family preservation, community development and an unfair economic burden include: The Committees on Civil Rights; General Welfare; Finance; Juvenile Justice; Mental Health, Mental Retardation, Alcoholism, Drug Abuse & Disability Services; Oversight and Investigations; State & Federal Legislation; Women's Issues; and Youth Services. It should be noted that the Public Advocate is an ex-officio member of all Council committees. Administrative Code §3-203.

I.
Argument in Support of Appeal

The Public Advocate and Council Members respectfully urge the Court of Appeals to grant relief to the Walton plaintiffs, and end the unfair commission system imposed by the New York State Department of Correctional Services (NYSDOCS). Our principal concern as *amici curiae* is that the lower court rulings are in contrast with telephone customers' constitutional and other legal rights and thereby protect a practice that unjustly affects New York City's most vulnerable residents and communities. A careful examination clearly illustrates that New York City residents are exploited by this unlegislated tax. We urge the Court to reverse the Appellate Division's decision, and in doing so, alleviate many disadvantaged New Yorkers of an injudicious economic burden.

Phone Charges are an Unfair Burden

New York State prisoners have no choice but to use the MCI collect call system, and those who accept their calls are forced to pay excessive rates. Currently, for a family member to speak to an incarcerated loved one, the prisoner must place a collect call through MCI/WorldCom. Upon acceptance of this call, the family is charged a \$3 connection fee and 16 cents per minute. The average prison phone call is billed at 19 minutes in length, costing over \$6.² Such rates can create phone bills that are burdensome for those struggling at or below the poverty line.

This fee is not levied on the criminal offenders but rather their innocent family members. The families of prisoners have already endured enormous emotional and financial pressure by having a loved one in jail, and this “tax” only adds to the strain. State prisoners make about 7 million collect calls a year, totaling an estimated \$39 million³. The State collects 57.5% of those funds, or \$22.4 million. Since 1996, the State of New York has been financing certain general operations, namely health care, for prisoners by way of these excessive charges. Health care in prisons is not the responsibility of those who wish to speak to a prisoner, and taking advantage of this vulnerable population is simply bad policy. Forty-two states take part in similar phone charge systems, but none does it quite like New York. The 57.5% commission to the State is the highest kickback in the country. The State also allows for one of the highest rates in the Nation, up to 630% more than the average consumer rate.⁴

As stated above, the majority of the families subject to these unjust phone charges live in New York City and are predominantly concentrated in low-income neighborhoods. For example, on certain blocks in the Brooklyn neighborhood of East New York, one in eight parenting-age males, between 18-45 years old, is in prison.⁵ The money saved by a more reasonable phone rate could be used instead to support local businesses and to reinvigorate their communities. High rates of incarceration potentially stigmatize neighborhoods, affecting resident’s access to job-hiring networks and ability to compete in labor markets. High crime rates can also deter businesses from locating in those areas.⁶ These unwarranted fees only further prevent high-crime neighborhoods from escaping this vicious cycle.

² Hernandez, E., *Phone Calls From Prison*, El Diario, 06-27-05, at page 22.

³ Department of Correctional Services, “Prison system implementing new inmate collect call phone rates; Reducing costs for the 83 percent of inmates furthest from home,” NYSDOCS Press Release, June 2003.

⁴ Dickerson, A., *MCI’s Cruel Extortion*, The Black Star News: Online Edition, 12-30-06, at URL: <http://www.blackstarnews.com/?c=135&a=1865> and Reisman, N., “Prisoners’ Families Seek Lower-cost Phone Calls,” Ithaca Journal, August 17, 2005.

⁵ Greany, D.M., *Criminal Justice System: A Way of Life for 1 in 8 Parenting-Age Males*, Our Times Press, March 1, 2006.

⁶ Fagan, et al., “Reciprocal Effects of Crime and Incarceration in New York City Neighborhoods,” Fordham Urban Law Journal, March 2003.

Phone Communication is the Primary Option

Although there are no official statistics, advocates estimate that there are approximately 120,000 New York State children with at least one parent in prison.⁷ Given that two-thirds of New York State prisoners are from New York City, it is reasonable to conclude that the majority of the 120,000 children come from New York City. Moreover, as the majority of prisons are located in upstate New York, distance becomes a great physical barrier in maintaining a relationship between incarcerated parents and their children. It is reported that 73.9% of prisoner families live over 100 miles from the prison.⁸ One-half of incarcerated parents have reported that they are never visited.⁹ Transportation costs make regular visits impossible for many New York City families. As a result, phone communication is the primary method of maintaining a relationship for many families and excessive rates jeopardize such communication.

An additional concern is the disproportionate number of New York City residents incarcerated due to New York State's drug laws, commonly known as "The Rockefeller Drug Laws." These laws, which carry lengthy sentences, affect not only those who commit drug offenses, but needlessly harm the thousands of children left behind. According to a 2002 Human Rights Watch Report, 11,113 drug offenders incarcerated in prisons are parents of 23,537 minor children. The same study estimated that 124,496 children had a parent or both parents in New York prisons between 1980 and 2001 for drug offenses.¹⁰ As many families cannot afford the phone rates, thousands of children of New York City residents convicted of non-violent drug offenses are not be able to maintain family connections.

Necessity for Inmate/Child Contact

The maintenance of a strong relationship between an incarcerated individual and his/her children can help address the emotional and developmental issues that may arise from the sudden absence of a parent. Communication is central in addressing a child's feelings of separation and abandonment. Many children of inmates are at greater risk for depression, aggressive behavior and withdrawal, and criminal involvement.¹¹ Two studies even concluded that children of incarcerated parents may be more likely than other children to become incarcerated themselves.¹² The positive influence of phone communication is a means of combating these trends. From a child welfare perspective, the State cannot afford to allow inmate family phone bills to become unaffordable. It is poor public policy when a low-income New York City family is forced to choose between purchasing groceries or maintaining contact with an incarcerated loved one.

⁷ Human Rights Watch, "Collateral Casualties: Children of Incarcerated Drug Offenders in New York," Human Rights Watch, Vol.14, No. 3 (G); June 2002.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Re-entry Policy Council, "The Report of the Re-entry Policy Council: Charting the Safe and Successful Return of Prisoners to the Community," Re-Entry Council Report, 2003.

¹² Ibid.

Lower Federal Phone Charges and Higher Prisoner Usage

Given the importance of communication between prisoners and their families, Betsy Gotbaum, Public Advocate for the City of New York, and several members of the New York City Council are concerned that the high phone rates imposed in New York State prisons has limited telephone communication. This conclusion is supported by the difference in telephone communication usage rates in the Federal and New York State prison systems. As the following statistics show, Federal prisoners (who pay much lower telephone rates) use the phone significantly more than State prisoners.

| Inmate Communication with Children:¹³ | | |
|---|--------------------|----------------------|
| Telephone | State Total | Federal Total |
| Daily or almost daily | 6.6% | 13.0% |
| At least once a week | 19.8% | 36.3% |
| At least once a month | 16.5% | 23.2% |
| Less than once a month | 15.4% | 11.3% |
| Never | 41.8% | 16.2% |

II.
Conclusion

For the reasons set forth above, *amici curiae* respectfully request that the Court of Appeals reverse the decision of the Appellate Division in the matter of Walton v. New York State Department of Correctional Services and MCI in recognition of the injustice done to thousands of New Yorkers and to end the practice of shifting to those City residents the costs of providing mandated State services.

Dated: December 1, 2006
New York, NY

Respectfully submitted,

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¹³ Mumola, C. J., "Incarcerated Parents and Their Children," Bureau of Justice Statistics Special Report, 2000.

