



September 1, 2016

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Dear Ms. Humes,


We at Common Cause appreciate the Census Bureau's invitation to submit comments in response to its federal register notice regarding Residence Rule and Residence Situations, 81 FR 42577 (June 30, 2016). To ensure that each district in this country fairly captures its residential population, for purposes of voting and fair representation, we urge the Bureau to count incarcerated people at their home addresses, rather than at the prison facilities in which they are temporarily located. Making this change to the residence rules is fundamental to ensuring that votes from prison districts do not hold more power than those from districts without prisons. It is also essential to avoid inappropriately removing representation from the home districts to which these incarcerated individuals most typically return upon completion of their sentences.

Founded in 1970, Common Cause is a national nonpartisan advocacy organization dedicated to empowering citizens in making their voices heard in the political process and holding government accountable to the people. Ensuring that every eligible citizen has an opportunity to cast a vote, free from discrimination and obstacles, is fundamental to a democracy that aims for and professes representation of all. Every voice counts, and every vote must be counted. To that end, each vote cast must be weighed fairly, in keeping with the principle of "one-person, one-vote" announced by the Supreme Court in *Reynolds v. Sims*. To protect these principles, Common Cause, through its national office and 35 state organizations, advances a number of elections reforms throughout the country, including the elimination of prison-based gerrymandering.

The practice of prison-based gerrymandering is at odds with our principles of democracy. Prisons are typically located in rural – often white-majority districts<sup>1</sup> - and in many instances the incarcerated persons make up a large majority of the district's population. States engaging in

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<sup>1</sup> For example, 98% of New York's prison cells are located in state senate districts that are disproportionately White; in Connecticut, 75% of the state's prisons are in state house districts that are disproportionately White. See Peter Wagner, 98% of New York's Prison Cells Are in Disproportionately White Senate Districts, Prison Pol'y Initiative (Nov. 17, 2010), <http://www.prisonersofthecensus.org/news/2005/01/17/white-senate-districts/>; see also Ending Prison-Based Gerrymandering Would Aid in African-American and Latino Vote in Connecticut, Prison Pol'y Initiative (Nov. 17, 2010), [http://www.prisonersofthecensus.org/factsheets/ct/CT\\_AfricanAmericans\\_Latinos.pdf](http://www.prisonersofthecensus.org/factsheets/ct/CT_AfricanAmericans_Latinos.pdf)



prison-based gerrymandering – by adopting the Bureau’s residence rules and allocating incarcerated persons to prison districts – necessarily inflate the votes of their rural, white voters at the expense of those cast by people of color living in non-prison, often urban, districts. The number of people affected by the practice, moreover, is not insignificant. In 2010, non-Hispanic Black men were incarcerated at a rate seven times higher than non-Hispanic White men<sup>2</sup>; it is these typically urban, minority-majority communities, to which incarcerated persons most often return upon completion of sentences, whose votes are made – by the practice of prison-based gerrymandering – to matter less than those of mostly white, rural voters.

When the Bureau first began counting Americans in 1790, the issue of where to count prisoners did not hold the same significance, or result in the same disparities, as it does today. As is well known, American demographics and living situations have changed dramatically over the past two centuries, and the Census has appropriately evolved in response to many such changes in order to provide an accurate picture of the nation. Indeed, the Census Bureau recently announced its intention to begin counting military individuals temporarily assigned abroad in their home districts. It is worth noting that the average deployment today is about 9 months long. Yet the Bureau has not made a similar decision when it comes to incarcerated individuals, even though they too are temporarily assigned elsewhere and often for comparable – or shorter – periods of time. In Rhode Island, for example, the majority of incarcerated persons spend fewer than 100 days in correctional facilities. Counting these individuals at a place where they don’t “eat and sleep most of the time” counters the Bureau’s own previous guidelines and contradicts its proposed ones for military. If nothing else, the Bureau must strive for consistency.


While waiting for the Bureau to make this needed change to how incarcerated persons get counted, a number of states have begun to take action on their own. New York State, California, Delaware, and Maryland have all passed legislation to eliminate the state-wide practice of prison-based gerrymandering, and over 200 counties and municipalities individually adjust population data to avoid the practice when drawing their local government districts. A number of others states – including Oregon, Illinois, Rhode Island, and New Jersey – have also begun considering legislation that would ban the outdated practice of counting incarcerated persons in the prisons where they temporarily remain.

Many states believe prison-based gerrymandering is an important issue and have taken measures to stop it, but such action is challenging without the assistance of the Federal Census Bureau. New York, for example, implemented a law to stop prison-based gerrymandering but faced numerous technical challenges, partisan opposition, and extreme delays in receiving data. Massachusetts tried to implement similar reforms, but found that they were prohibited from creating rules that were inconsistent with those of the Federal Bureau by their state constitution. As evident by these state and local actions, states are not legally required to adopt the Census Bureau’s definition of “residence” when allocating individuals for redistricting purposes. However, the reality is that they almost all do – for either practical or state legal purposes. After all, the Bureau provides the “leading source of quality data about the nation’s people ...”,<sup>3</sup> and is best suited to lead the way – and thus guide remaining states – on this important issue. An ad

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<sup>2</sup> U.S. Dept. of Justice, “Prisoners in 2010,” avail. at <http://www.bjs.gov/content/pub/pdf/p10.pdf>

<sup>3</sup> See Census Bureau website at <http://www.census.gov/about.html>, last visited on July 9, 2015.



hoc approach on how to apportion incarcerated persons is neither efficient nor fair; votes across districts, and across the country, should hold equal weight.<sup>4</sup>

All states ascribing to the same definition of “residency” for incarcerated persons makes good sense, particularly since all incarcerated persons share the same characteristic of temporary removal from both greater society and their own homes. Indeed, they don’t partake of the prison district’s roads, parks, or schools; they are confined within that district only temporarily; and, in the vast majority of instances, they return to the districts in which they lived before incarceration. Changing the residence rule to reflect this reality would provide long-awaited guidance to states.

Thank you for this opportunity to comment on your Residence Rule and Residence Situations. We appreciate that the Bureau strives to count all individuals in the right place in keeping with changes in society and population realities. Because Common Cause believes in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their home address.

Sincerely,

/s/

Allegra Chapman  
Director of Voting and Elections  
Common Cause

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<sup>4</sup> Moreover, Massachusetts cannot easily make such changes to the ways in which it allocates prisoners for redistricting purposes until the Census Bureau issues a change in its residence rules, due to a state constitutional requirement that it follow the Bureau’s rules. The Massachusetts legislature sent the Bureau a resolution in 2014 urging it to tabulate incarcerated persons at their home addresses. *See* The Massachusetts General Court Resolution “Urging the Census Bureau to Provide Redistricting Data that Counts Prisoners in a Manner Consistent with the Principles of ‘One Person, One Vote’” (Adopted by the Senate on July 31, 2014 and the House of Representatives on August 14, 2014).