

United States Senate

WASHINGTON, DC 20510

July 16, 2014

Mr. John Thompson
Director, U.S. Census Bureau
4600 Silver Hill Road
Washington, DC 20233

Dear Mr. Thompson:

We write to request that the U.S. Census Bureau undertake the necessary research to ensure that, for the 2020 Census, incarcerated persons will be tabulated as residents of their home communities—rather than as residents of their place of incarceration—for the purpose of redistricting. Each of the states represented by the signatories below—Maryland, Delaware, and New York—has adopted legislation requiring or recommending that incarcerated persons be tabulated as residents of their pre-incarceration home communities for redistricting purposes.

We believe that tabulating persons serving time in prison as residents of their home communities is not only far more consistent with the law in our states, but is also the most fair and sensible approach. We believe that the Bureau's current practice of tabulating incarcerated persons as residents of the jurisdictions where their prisons happen to be located creates a serious distortion in political representation.

The Bureau has modified its "usual residence rule" in the case of other populations when counting people where they "live and sleep most of the time" is not reasonable. High school students who board away from home are tabulated at their parents' addresses; and overseas military personnel and federal workers are tabulated to the state they expect to return after the completion of their service abroad. A change in current practice is warranted in the case of incarcerated persons, as well.

Incarcerated persons are in no real sense a part of the communities where their prisons happen to be located. They do not vote, pay taxes, or use resources in these communities. Nationwide, the average incarcerated person can expect to serve only about two years in prison, and the vast majority plan to return to their home communities upon release. Survey research has shown that state legislators do not view persons who are incarcerated in their districts as constituents. Rather, a state legislator is far more likely to view an incarcerated person as a constituent if that person's pre-prison home lies within her district.

The definition of "residence" in each of our states requires more than just presence; it also requires intent to remain. For example, the New York State Constitution, art. II, sec. 4 provides: "for the purpose of voting, no person shall be deemed to have gained or lost a residence, by reason of his or her presence or absence, while... confined in any public prison." As noted above, the vast majority of incarcerated persons do not intend to remain in the jurisdictions in which

they are incarcerated. They are therefore not legal residents of these jurisdictions. Rather, their legal residency remains their last address prior to incarceration.

The Bureau's current practice distorts our democracy, and raises serious one-person, one-vote concerns. For example, 18% of District 2B in Washington County, Maryland is incarcerated. This gives every group of 4 residents in District 2B as much political influence as 5 residents elsewhere in the state.

As noted above, each of the states we represent has passed laws to correct for the Bureau's current practice by reallocating prison populations to their last known pre-incarceration addresses. We appreciate the Bureau's decision to provide group quarters data earlier in the 2010 redistricting cycle to facilitate compliance with the recently enacted laws in our states. But, we believe that for the 2020 Census the Bureau must go further and ensure that the Census tabulates incarcerated persons at their pre-prison residences. This would make it much easier for those charged with drawing district boundaries in our states to comply with our state laws.

Other states have provisions in their constitutions that tie districting practices directly to the Bureau's tabulations, so that solving this problem at the state level would require an amendment to their constitution—a daunting barrier to reform. These states are unlikely to correct the distortions outlined above unless and until the Bureau provides home residence information for incarcerated persons as part of its redistricting data.

Thank you for your prompt attention to this matter. Although the next Census may seem far off, we know that adjustments in the Bureau's policy on tabulating prison populations will require preparation. We request that the Bureau inform us what steps it is taking in the near term to make this change feasible, and on what timeline the Bureau expects to make a final decision on this matter.

We value the work that the U.S. Census Bureau undertakes to make a large and complex democracy function, and we look forward to working with you to make political representation in the United States fairer and more accurate for all Americans.

Sincerely,



BENJAMIN L. CARDIN
United States Senator



CHRISTOPHER A. COONS
United States Senator



KIRSTEN E. GILLIBRAND
United States Senator