July 16, 2015

Ms. Karen Humes

Chief, Population Division

U.S. Census Bureau, Room 5H174

Washington, DC 20233

Dear Ms. Humes,

Common Cause in Wisconsin submits this comment in response to the Census Bureau’s federal register notice regarding the Residence Rule and Residence Situations, 80 FR 28950 (May 20, 2015). Common Cause Wisconsin urges you to count incarcerated people at their home address, rather than at the particular facility that they happen to be located at on Census day.

Ensuring that redistricting is impartial and that legislative lines are drawn in a fair and transparent way is part of our core mission to promote civic engagement and accountability in government. So is ensuring that every eligible American’s vote is counted fairly. Counting incarcerated persons as residents of the district in which they are temporarily held has the effect of unfairly enhancing the political power of those who live and vote in the prison district while unfairly diluting the votes of those in districts without prisons. Legislators with a prison in their district should not get a bonus for keeping the prison full. This dynamic hurts our democracy. And it hurts the communities from which these incarcerated persons hail.

As you know, American demographics and living situations have changed drastically in the 225 years since the first Census, and the Census has evolved in response to many of these changes in order to continue to provide an accurate picture of the nation. Today, the explosion in the prison population requires the Census to update its methodology again. A fair redistricting process not only involves complying with the federal law of “one person, one vote” but also with the federal Voting Rights Acts of 1965 which protects minority communities’ opportunities “to participate in the political process and to elect representatives of their choice.”

The need for change in the “usual residence” rule, as it relates to incarcerated persons, has been growing over the last few decades. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million. But since then, the number of incarcerated people has more than quadrupled, to over two million people behind bars. The manner in which this population is counted now has huge implications for the accuracy of the Census.

Currently, four states (California, Delaware, Maryland, and New York) have taken a state-wide approach to adjust the Census’ population totals to count incarcerated people at home, and over

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200 counties and municipalities individually adjust population data to avoid prison gerrymandering when drawing their local government districts. This is the direction all states should follow.

Wisconsin, though, continues to count incarcerated persons the way the Census Bureau does. In 2011, the legislature used 5,583 incarcerated people to pad out the population of District 53. Without the incarcerated populations, the district is 10% below the required size. This gives every 90 residents of the 53rd district the same influence as 100 residents of any other district in the state.

Not only do the Census Bureau’s methods skew our district populations, but they also paint a flawed picture of their demographic makeup. District 53, for example, seems to have a large African-American population, larger than 74 other districts. But of the 2,784 African-Americans in the district, all but 590 are incarcerated. The day the people incarcerated in the district are allowed to vote again, they will be on a bus, heading back to their home districts. The Census counts the prison districts’ incarcerated populations as if they resided there even though they are not a part of this district and never will be – they don’t use the roads, visit the libraries, enjoy the state’s public education, or walk through the parks. For all purposes, they simply do not reside in these districts.

But even these examples are nearly unremarkable compared to the dramatic vote distortions that people face in their local governments. For example, 80% of a district in Juneau County is incarcerated. This gives every 20 residents of that district the same voting power as 100 residents of any other ward. To say that this is unfair would be an understatement. Yet Juneau is hardly the only county significantly affected; 75% of District 2 in Waupun County is incarcerated, 62% of Adams County's Districts 13 and 5 are incarcerated, 53% of a district in Juneau City is incarcerated, and 51% of Jackson County's District 12 is incarcerated, to name a few.

Nevertheless, there 6 cities and counties rejected the Census Bureau's prison counts, successfully adjusting their redistricting population to create fair districts.

This ad hoc approach is neither efficient nor universality implementable. If the Census Bureau would change its practice of counting incarcerated individuals at their home address rather than at the prison location, it would significantly alleviate the burden on state and local agencies and provide an efficient solution to greatly improve the fairness of apportionment and representation for millions of Americans. As you well know, states across the country look to the Census Bureau as the nation’s foremost expert on national demographics and data, and more often than not count incarcerated persons the way the Bureau does. Once the Bureau leads the way with an update to a now outdated practice, states are sure to follow.

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Thank you for this opportunity to comment on the Residence Rule and Residence Situations; we appreciate the Bureau’s aim to count everyone in the right place in keeping with changes in society and population realities. Because Common Cause Wisconsin believes in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their last-known home addresses.

Sincerely,

Jay Heck

Executive Director

Common Cause in Wisconsin