



3600 Clipper Mill Road, Suite 350, Baltimore, MD 21211
(T) 410-889-8555 • (F) 410-366-7838 • www.aclu-md.org



Somerset County Branch Unit #7026
P.O. Box 355
Princess Anne, MD 21853

Maryland State Conference
P.O. Box 9702, Arnold, MD 21012

August 2, 2016

Ms. Karen Humes, Chief
Population Division
U.S. Census Bureau
Room 6H174
Washington, DC 20233

Re: Maryland NAACP and ACLU of Maryland Comments on 2020 Census Residence Rule Supporting the Counting of Incarcerated People at Their Home Address

Dear Ms. Humes:

The Maryland State Conference of NAACP Branches, the Somerset County Branch of the NAACP (together, “the NAACP”) and the American Civil Liberties Union of Maryland (“the ACLU-MD”) submit this comment in response to the Census Bureau’s *Federal Register* notice regarding the Residence Rule and Specific Residence Situations, 81 FR 42577 (June 30, 2016). We reiterate our concerns, first expressed last year in a July 17, 2015 submission, over the Census Bureau’s proposal to continue counting people at their place of incarceration instead of their last place of residence.

Counting incarcerated people at the facility where they happen to be imprisoned on Census day ignores the temporary nature of incarceration. Every year, approximately 636,000 inmates leave prison and 11 million inmates leaves jails to return to their homes to become ordinary citizens of their communities.¹ Moreover, with the recent focus by states on prison reform, new legislation will likely lead to even shorter incarceration periods. For example, in Maryland, the passage of the Justice Reinvestment Act eliminates mandatory minimum sentences for many offenses and limits the incarceration periods for many technical violations.² In light of the temporary nature of incarceration, the Census Bureau’s proposed rule fails to follow the definition of “usual residence” as the place where a person “eats and sleeps *most of the time*.” Children at boarding school, soldiers deployed overseas, and juveniles in treatment centers are all counted at their permanent addresses, not the place that they are located on Census day. There is no reason why prison inmates should be the exception to this general rule and the existence of such an exception without an explanation is extremely troubling.

¹ Prison Policy Initiative, “Mass Incarceration: The Whole Pie 2016” (Mar. 14, 2016), available at <http://www.prisonpolicy.org/reports/pie2016.html>.

² General Assembly of Maryland, “Justice Reinvestment Act” (June 3, 2016), available at <http://mgaleg.maryland.gov/webmg/frmMain.aspx?id=sb1005&stab=01&pid=billpage&tab=subject3&ys=2016rs>



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Our experience with this issue in Maryland is a testament to the detrimental effect that the current proposed rule can have in undermining equal representation for minority residents. The NAACP and the ACLU-MD are committed to preserving all citizens' right to be equally represented in the electoral system, and we have worked to make that promise a reality in our own state. Somerset County, on Maryland's Eastern Shore, has long been one of the state's most racially-divided communities, with a sad history that includes lynchings, formal opposition to school integration through the 1960s, and court-ordered reforms to racially discriminatory election and employment practices into the 1980s and 1990s.³

At the time of the last U.S. Census, Somerset County was 42 percent African American—the highest ratio of blacks to whites in any Eastern Shore County.⁴ Yet, despite Somerset's demographic diversity, blacks have historically been left virtually unrepresented in County government.⁵ Indeed, until 2010, no black person had *ever* been elected or appointed—in all of the County's 350-year history—to *any* top County office, including County Commissioner, County Administrator, Sheriff, Detention Center Warden, Judge, State's Attorney, State Delegate, County Treasurer, County Finance Director, County Attorney, County Personnel Director, County Planning Director, County Fire Marshall, County Emergency Management Director or County Elections Administrator, among others.⁶ The situation persisted even though the historically black University of Maryland, Eastern Shore ("UMES"), located within the county, graduates many candidates qualified for government jobs and offices.

In 2008 and 2009, the NAACP and ACLU-MD began to understand that part of the reason African Americans had remained shut out of Somerset government for so long related to what is now known as "prison-based gerrymandering." Because the County is rural and relatively sparsely populated, the inclusion for redistricting purposes of the large prison population

³ See ACLU of Maryland and Somerset County NAACP, "Semper Eadem—'Always the Same?'" at 5 (2009), available at http://www.aclu-md.org/uploaded_files/0000/0348/finalreportwapp.pdf [hereafter "Report"].

⁴ See U.S. CENSUS, "2010 Census Interactive Population Map," available at <http://www.census.gov/2010census/popmap/>. According to the 2010 U.S. Census, Somerset County is 53.53% white and 42.28% black; the only parts of Maryland with a higher percentage of black residents are Prince George's County and Baltimore City.

⁵ See Report, *supra* note 1, at 4. At the time of the Report, African Americans represented 35 percent of Somerset County's available labor force, but only 12.6 percent of County employees.

⁶ See *id.* at 2–3. Indeed, according to EEO filings at that time, not a single African American was employed by the County in a professional capacity. The County employed 46 people full or part time that year in official, professional, technical or paraprofessional positions, but *none* was African American.



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temporarily at Eastern Correctional Institution (“ECI”) severely undermined the racial fairness of the local election system.

Due to a Voting Rights Act challenge to the County’s at-large election system in the mid-1980s, the County switched to a system of five single-member districts to elect its County Commission. The County planned one district as a remedial district with a majority black population, but by the time that district was established, ECI had opened. ECI’s mostly minority inmates were counted as residents of the so-called remedial district, even though they were ineligible to vote in Somerset elections. The prison’s inclusion distorted the district’s voting power, because only a small share of those counted in the district were actually eligible to vote, and an even smaller share of those eligible to vote were African American. As such, the district could not and did not function as a true remedial district, and for two decades consistently elected white officials to represent the “minority” district. Moreover, because inmates significantly outnumbered other district residents, their inclusion in the redistricting database led to over-representation of non-prison residents within that district, as compared to residents in other districts that did not include a prison.

In 2009 and 2010, the NAACP and ACLU-MD partnered with community leaders to challenge this system. Together, they advocated with local Somerset officials, the Maryland Attorney General, and the Maryland General Assembly for exclusion of the prison population from the redistricting database. In 2010, as a result of this advocacy, the Maryland legislature became the first in the nation to adopt a law mandating that prisoners be counted at their place of last residence, rather than their place of incarceration.⁷ This simple change finally gave meaning to the voting rights remedy put in place by Somerset County in 1986 and paved the way for greater participation by minorities in Somerset County’s local government. In fact, the County’s first black County Commissioner, Rev. Craig Mathies, was elected shortly after the law was enacted. Furthermore, Somerset’s 2012 redistricting plan includes two districts with majority minority populations, better reflecting the demographics of the community and enhancing minority electoral opportunities within the County.

The story of Somerset County illustrates one adverse collateral consequence that can follow from the dramatic growth of our nation’s prison population over the past few decades: a reduction in the suitability of current Census counts for use in redistricting. As recently as the 1980s, the incarcerated population in the U.S. totaled less than half a million.⁸ But since then, the number

⁷ Md. Code, State Gov’t § 2–2A–01 (2015).

⁸ See U.S. Department of Justice, Bureau of Justice Statistics, “Historical Corrections Statistics in the United States, 1850–1984” at Table 4–1 (December 1986), available at <http://www.bjs.gov/content/pub/pdf/hcsus5084.pdf>.



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of incarcerated people has more than quadrupled, to over two million people behind bars.⁹ This change implicates a need for corresponding change in application of the Census’s “usual residence” rule with respect to incarcerated persons, to ensure that redistricting decisions and remedies count populations accurately and promote electoral fairness for all.

By designating a prison cell as a residence in the 2010 Census, the Census Bureau concentrated a population that is disproportionately male, urban, and African American or Latino into just 5,393 Census blocks that are located far from the actual homes of incarcerated people.¹⁰ Although Maryland (along with California, Delaware, New York, and over 200 counties and municipalities) has approved a measure to adjust the Census’ population totals to count incarcerated people at home, this *ad hoc* approach is neither efficient nor universally feasible. For example, the Massachusetts state legislature concluded that the state constitution did not allow it to pass similar legislation, so it sent the Bureau a resolution in 2014 urging the Bureau to tabulate incarcerated persons at their home addresses.¹¹

Thank you for this opportunity to comment on the Residence Rule and Specific Residence Situations. Given that prison is merely a temporary form of shelter, and from our experiences in Somerset County, the Maryland State Conference of NAACP Branches, the Somerset County Branch of the NAACP and the ACLU of Maryland reiterate our deep concern about the proposed regulation and urge the U.S. Census Bureau to count incarcerated people as residents of their last home addresses in order to produce a fair and accurate 2020 Census.

⁹ See U.S. Department of Justice, Bureau of Justice Statistics, “Correctional Populations in the United States, 2012” at Table 2 (December 2013), available at <http://www.bjs.gov/content/pub/pdf/cpus12.pdf>.

¹⁰ See Prisoners of the Census, “Detailed demographics of correctional populations now available for nation” (Sept. 13, 2011), available at <http://www.prisonersofthecensus.org/news/2011/09/13/sf1/>.

¹¹ 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).



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Sincerely,

August 2, 2016

Gerald G. Stansbury, President, Maryland NAACP Conference

Date

August 2, 2016

Rev. Charles Bagley, President, Somerset County NAACP

Date

August 2, 2016

Deborah A. Jeon, Legal Director, ACLU of Maryland

Date