

July 15, 2015

Karen Humes
Chief, Population Division
U.S. Census Bureau, Room 5H174
Washington, DC 20233

Dear Ms. Humes,

Common Cause NY 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 NY 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. Counting people in prison as residents of the district in which they are incarcerated has the effect of unfairly enhancing the political power of those who live in the district with the prison in it 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.

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 growth 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' opportunity "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 including our own (California, Delaware, Maryland, and New York) are taking a state-wide approach to adjust the Census' population totals to count incarcerated people at home, and

over 200 counties and municipalities all individually adjust population data to avoid prison gerrymandering when drawing their local government districts.

After New York finally passed its law to end prison based gerrymandering, the NYS Legislative Task Force on Demographic Research and Reapportionment (LATFOR) was mandated to re-allocate state prisoners to their pre-incarceration home address. Part XX of Chapter 57 of the Laws of 2010 states:

“Upon receipt of such information for each incarcerated person subject to the jurisdiction of the department of correctional services, the task force shall determine the census block corresponding to the street address of each such person's residential address prior to incarceration (if any), and the census block corresponding to the street address of the correctional facility in which such person was held subject to the jurisdiction of such department. Until such time as the United States bureau of the census shall implement a policy of reporting each such incarcerated person at such person's residential address prior to incarceration, the task force shall use such data to develop a database in which all incarcerated persons shall be, where possible, allocated for redistricting purposes, such that each geographic unit reflects incarcerated populations at their respective residential addresses prior to incarceration rather than at the addresses of such correctional facilities.....The assembly and senate districts shall be drawn using such amended population data set.”

Task Force technical staff adjusted the Census Bureau's 2010 Public Law 94-171 data for New York State legislative redistricting. They created three statewide block-level files, which included every category necessary to accommodate the adjusted data and to make the Department of Correctional Services (DOCCS) data compatible with PL 94-171. The prisoner total to be subtracted from prison based census blocks was 60,708 in 2010. One file was generated with all of the geocoded prisoner addresses and racial/ethnic information from DOCCS (to be added to PL 94-171). Another file was created through aggregating racial and ethnic information by correctional facility and then disaggregating when prisons were located on multiple blocks. A third block-level file was produced for federal prisoners. The adjustment is based on: Adjusted PL = PL + Geocoded prisoner addresses – DOCCS facilities – Federal facilities. This process took a long time, with considerable bureaucratic delays. LATFOR did not complete its prisoner reallocation until 2012.

Such prisoner reallocation greatly impacted how the people of NYS are represented. North Brooklyn Senate District 18, represented by Senator Martin Dilan, had the largest gain in reallocated prisoner population with 2,100 people. In total, Brooklyn Senate Districts gained over 8,500 people, and New York City as a whole gained over 21,000, mostly minority people. Assembly Districts 55 and 56 in central Brooklyn, both represented by African American women, also had significant gains in population after prisoner readjustment, 1,193 and 1,090 people respectively. In contrast, Senate District 45, which encompasses Clinton, Essex, Franklin, Saint Lawrence, Warren and Washington counties, lost over 12,000 of its population count due to the prisoner readjustment. According to a 2012 DOCCS report, almost half, or about 47%, of the incarcerated population had a home residence in the five boroughs of New York City, and only 12% were committed from Long Island, Rockland and Westchester counties. The rest of the incarcerated population came from upstate. Of the total incarcerated population, 49.5% was African-American and 23.6% Hispanic.



The importance of re-knitting a community's once-fractured state of political representation cannot be overstated and many New York State's upstate counties also strengthened the voice of their minority communities through reallocation. For example, Monroe County gained almost 3,000 people, with over 2,000 African-Americans while Onondaga County counted almost 2,000 residents, over half of them minorities.

There were several challenges with implementing New York's law, namely the technical challenges for LATFOR, partisan political opposition to applying the law's mandates and the extreme delays in receiving data from DOCCS, which deferred the entire redistricting process and complicated public engagement efforts of democracy advocates. Also, New York's 2010 law only requires population data to be adjusted for state Senate and Assembly districts, not for Congressional districts, and thus does not solve the problem of underrepresentation for New Yorkers in its entirety.

This ad hoc approach in a few states 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.

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

Sincerely,

A handwritten signature in cursive script that reads "Susan Lerner".

Susan Lerner
Executive Director
Common Cause NY