July 20, 2015

Karen Humes

Chief, Population Division

U.S. Census Bureau, Room 5H174

Washington, DC 20233

Dear Ms. Humes,

Common Cause New Mexico and the Central New Mexico Chapter of Progressive Democrats of America submit 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 New Mexico 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 also 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.

In New Mexico, the practice of prison-based gerrymandering distorts our districts.  Two districts drawn after the 2000 Census include more than 1,000 incarcerated people as constituents. The actual residents of districts 8 and 62 are being granted about 4% more influence than the residents of each other district.  On the local level, in the city of Hobbs, 21% of people in District 5, drawn after the 2000 Census, were incarcerated at the Lea County Correctional Facility. This means that every 79 residents in District 5 had as much political power as 100 residents in the other districts.[1]

Aztec City drew districts based on actual resident populations after the 2000 Census, rejecting prison-based gerrymandering.  New prisons constructed in Cibola and Union counties over the last decade will require county officials to decide for the first time whether they will count incarcerated persons in the prison districts.[2]  If the Census Bureau were to right an outdated mode of counting, then counties with new prisons would have proper guidance to follow.

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

This ad hoc approach in a few states, counties, and municipalities 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.

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 New Mexico and the Central New Mexico Chapter of Progressive Democrats of America believe in a population count that accurately represents communities, we urge you to count incarcerated people as residents of their last-known home addresses.

Sincerely,

Viki Harrison, Common Cause New Mexico

Paul Stokes, Central New Mexico Chapter of Progressive Democrats of America

[1] See Prison Policy Initiative, Fixing Prison-Based Gerrymandering After the 2010 Census: New Mexico, (Jul. 15, 2015, 7:53 PM), <http://www.prisonersofthecensus.org/50states/NM.html>

2 Id.

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[2] Id.