

DATE: July 19, 2015

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

CC: Peter Wagner
Prison Policy Initiative
P.O. Box 127
Northampton, MA 01061

RE: 2020 Census Residence Rule and Residence Situations

Notice and Request for Comment (Docket Number 150409353-5353-01)
Federal register / Vol. 80, No. 97 / Wednesday, May 20, 2015 / Notices

Dear Ms. Humes:

I am writing this letter to respond to the proposed 2020 Census "Residence Rule and Residence Situations" that is open for public comment.

I believe that there is a serious problem with category number 13, ("People in Correctional Facilities for Adults"). In each of the listed subcategories (a through d) of number 13, people are proposed to be: "Counted at the Facility."

Your question was about problems seen in the 2010 Census with the rules; but as this part of the rule has been unchanged for at least the last several decades; my experience in the 1990, 2000 and 2010 redistricting cycles may be helpful.

I live, since the late 1990's, in Franklin County, New York, a rural county that has a large prison population. Prisoners are not residents of our community as they originate outside of our community, they have no interaction with our community and immediately leave the community when their sentences expire or when the Department of Corrections chooses to transfer them elsewhere. Enumerating these populations as part of our community forces our community to choose between either: (1) rejecting your counts, or (2) using census data that dilutes the votes of most of our community's residents to the benefit of the few who live immediately adjacent to the prison.

I have been concerned about the implications of your "residence rule" for democracy within rural communities since the 1990 Census when I was a resident of another upstate New York county which similarly hosted a large correctional facility. I, and many of my Jefferson County neighbors were concerned and raised public awareness that relying on your counts resulted in county apportionment that diluted the votes of residents who did not live near the prisons.

In the late 1990's, I moved to Franklin County and was again involved as a citizen activist in redistricting. There, I was pleasantly surprised to learn that I would not need to organize a post-2000 lawsuit against Franklin County because my county was already committed to modifying your census data to remove the prison populations and avoid what is now commonly called "prison gerrymandering."

However, a controversy that erupted in the neighboring county of St. Lawrence over prison-counting after the 2000 Census led me to discover that the rejection of Census Bureau prison counts in rural communities was the rule, not the exception. In summary, St. Lawrence County had, after the 1990 Census, traditionally rejected your prison counts, but for "outcome determinative" reasons decided to include the prison populations in the post-2000 districts. The public objected, with thousands of county residents signing a petition requesting the redistricting plan be put on the ballot. The county leadership rejected the petition and in response the public defeated the political party responsible for the prison gerrymandering in the next election.

Around this time, an upstate newspaper contacted other counties in the state to see how they were currently handling the prison populations, and I surveyed several counties that this newspaper missed. This survey work inspired the Prison Policy Initiative to do a more formal survey analysis which they published as "Phantom constituents in the Empire State: How outdated Census Bureau methodology burdens New York counties" concluding that the majority of New York State counties with large prisons rejected prison gerrymandering.

What should be obvious from my letter is that I, along with the elected leaders of my county, were concerned that including the prison population where the Census Bureau counted it but where those people -- 10% of our county's Census population -- do not reside would have a vote dilutive impact on the other parts of our county. We simply did not want to draw a county legislative districts that had a preponderance of incarcerated people. Such districts would have given every county resident living near the prisons much more voting power than the other residents of the county.

Having considered the effects of "prison gerrymandering" on rural counties that host prisons, I and many of my neighbors came to the obvious conclusion that the Census Bureau's counts are inaccurate in so far as the Bureau counted incarcerated people as residents of the prison locations. As a result, we removed the prison populations from the one set of legislative districts that we could control -- our county districts.

And here I feel I need to clarify our approach, given current statements from some plaintiffs in the current Texas case about excluding some non-voting populations from redistricting.

For us, in Franklin County, the decision was not whether to count incarcerated people, but where they should rightly be counted, which we think is at their home of record. We had no right to count prisoners as local constituents, they relied on the representative services of their home legislators, and there is nothing that one of our county legislators could do for them.

Removing the prison population was the best we could do because we lacked authority over the redistricting bodies of the New York City Council, the Albany City Council and the other home locations of the incarcerated people. As I, along with two neighbors wrote to you in our July 9, 2004 comment letter: "We know of no complaints from prisoners as a result, as they no doubt look to the New York City Council for the local issues of interest to them."

Thankfully, New York State took things one step further with the passage of Part XX (ending prison gerrymandering at the state and local levels) which made sure that all state prisoners are counted in the appropriate locations. This is legislation that I and many of my neighbors supported. And while I support Part XX, I must note that the law had one shortcoming that only the Census Bureau can fix: Part XX did not reallocate federal prisoners to their homes; it simply removed them from the count.

The Census Bureau is the only entity which can provide a complete solution to the redistricting confusion caused by the current "usual residence rule." I urge you to adjust this policy and count all prisoners at their homes of record in the next federal Census.

Sincerely,

Daniel Jenkins
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