



**NATIONAL REDISTRICTING
FOUNDATION**

17 E. Monroe Street #214 • Chicago, IL 60603

By Electronic Submission

April 24, 2020

Honorable Steven Dillingham, Director
U. S. Bureau of the Census
4600 Silver Hill Road
Washington, DC 20233

Re: DAP2020

Dear Director Dillingham:

I write today on behalf of the National Redistricting Foundation (“NRF”) to convey our significant concerns regarding the Census Bureau’s proposed use of differential privacy for the 2020 Census. We are concerned that the Bureau’s proposed application of differential privacy will substantially diminish the usability of the resulting data for redistricting, hampering the ability of state and local governments to comply with constitutional and statutory requirements that ensure fair and equal political representation. In particular, by generating inaccurate population and racial data for various geographies, the Bureau’s proposal risks undermining the constitutional principle of “one person, one vote” and the non-discrimination protections of the Voting Rights Act of 1965. Given the anticipated negative impact this new approach will have on drawing voting districts that accurately reflect and represent the people living in them, we urge you to reconsider—or at least recalibrate—your proposed approach.

The National Redistricting Foundation is a 501(c)(3) organization committed to preventing and reversing invidious gerrymandering, by promoting the public’s awareness of reapportionment and redistricting processes and engaging in legal action as appropriate to ensure that states’ redistricting and electoral processes result in fair representation. Bringing national attention to the importance of a fair redistricting process in 2021 is central to our mission, and elevating the need for a fair and accurate census in 2020 is a foundational piece of this work.

While we understand the need to protect data under Title 13 (U.S. Code) and to protect individuals’ information from being inadvertently disclosed, data accuracy is of paramount importance for redistricting at all levels of government. This fact must not be understated or under-appreciated. As things currently stand, we are deeply troubled by the sense that the privacy-loss budget tradeoff is unacceptably weighted against accuracy.

In particular, initial analyses based on the Bureau’s 2010 Demonstration Data Products suggest that the Bureau’s proposal risks undermining voters’ rights to equal and fair political representation in two ways.

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First, the Bureau’s differential privacy proposal appears to generate significant inaccuracies in the population count for various geographic units within a given state. However, state and local governments rely on PL 94-171 redistricting data to reflect the *actual* count of persons residing in various geographic units. To ensure equal political representation, the United States Constitution, as well as various state laws, require state and local governments to redistrict based on defined—and often exacting—equal population standards. Under this constitutional principle of “one person, one vote,” congressional districts must not differ in population by more than one person. While state legislative districts have slightly more flexibility than congressional districts with respect to population deviation, the impact of differential privacy becomes more severe for smaller geographic units, where relatively low differences in population count can generate significant deviations from equal population requirements—wreaking havoc on the constitutional guarantee of equal political representation. These concerns would be compounded if, as some analyses indicate, the Bureau’s proposed algorithm tends to systematically redistribute population from urban areas to rural areas.¹ The resulting reallocation of political representation from urban communities to rural communities would do significant damage to the principle of political equality on which our constitutional democracy is based.

Second, accurate census data, down to even the smallest geographic level, is also essential to protect against gerrymandering, particularly at the expense of protected minority groups. The Voting Rights Act of 1965 (as amended), Section 2, provides a powerful tool to protect the voting rights of minority communities that have been historically, systematically oppressed. But the enforcement of Section 2 in redistricting is dependent on having accurate racial and ethnic data. The courts have made clear that Section 2 requires states to draw effective minority districts where, among other things, the minority group is able to comprise at least 50% of the district’s voting age population. The application of differential privacy may skew the data in minority districts, perhaps threatening their sustainability at or near the 50% minority voting age population requirement. In particular, initial analyses suggest that the Bureau’s differential privacy proposal can produce inaccurate counts for minority communities by reallocating population from larger minority groups to smaller ones and by geographically dispersing concentrated minority populations – precisely the kinds of inaccuracies that would work against the viability of majority-minority districts.²

As you continue to evaluate your options for applying differential privacy to the 2020 census, please make the necessary changes in your planning to maximize the extent to which the resulting data reflects the actual population counts, including with respect to racial groups, that

¹ See Memorandum from M. Gunter to Governor R. Northam, January 23, 2020, *available at* https://www.ncsl.org/Portals/1/Documents/Redistricting/VA_CensusDistortionProgram_VAGovernor_2020-01-23.pdf; Letter from M. Mohrman to S. Dillingham, February 6, 2020, *available at* https://www.ncsl.org/Portals/1/Documents/Redistricting/WA_OFM_DAS_Response_Letter.pdf.

² See *supra* note 1.



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are enumerated for all geographic units within a state. Anything less threatens to undermine the constitutional principle of equal representation—and the rights guaranteed by the federal Voting Rights Act.

Thank you for your consideration of this comment and request.

Respectfully submitted,

Marina Jenkins
National Redistricting Foundation