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Census Data Sets the Timer on Redistricting Reform

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On April 26, the Census Bureau released its first set of decennial census data, which will determine how the 435 Congressional seats in the House of Representatives are apportioned by state. Because each state's electoral votes equal the size of its House and Senate delegation, apportionment also affects presidential elections. In addition, this data determines the distribution of federal funds for some programs.

The Census Bureau would normally have released these state-by-state population numbers on December 31 of last year, but were delayed because of the COVID-19 pandemic. By September 30, 2021, the Census Bureau will provide the states with block-by-block population counts, which will enable the commencement of the redistricting process. That leaves Congress a short timeframe to pass redistricting reform before states draw their new maps.

Apportionment

Article 1, Section 2 of the Constitution mandates that an enumeration be conducted every ten years and gives Congress the authority to determine the manner by which this enumeration is conducted. This is the primary mission of the Census Bureau. Under the Constitution each state receives at least one Congressional seat. Seats 51-435 are apportioned out as established by the Apportionment Act of 1941, known as the "method of equal proportions." Under this method, each seat is apportioned to the state that is highest on the priority list. The priority list is [determined](#) by a formula based on each state's population.

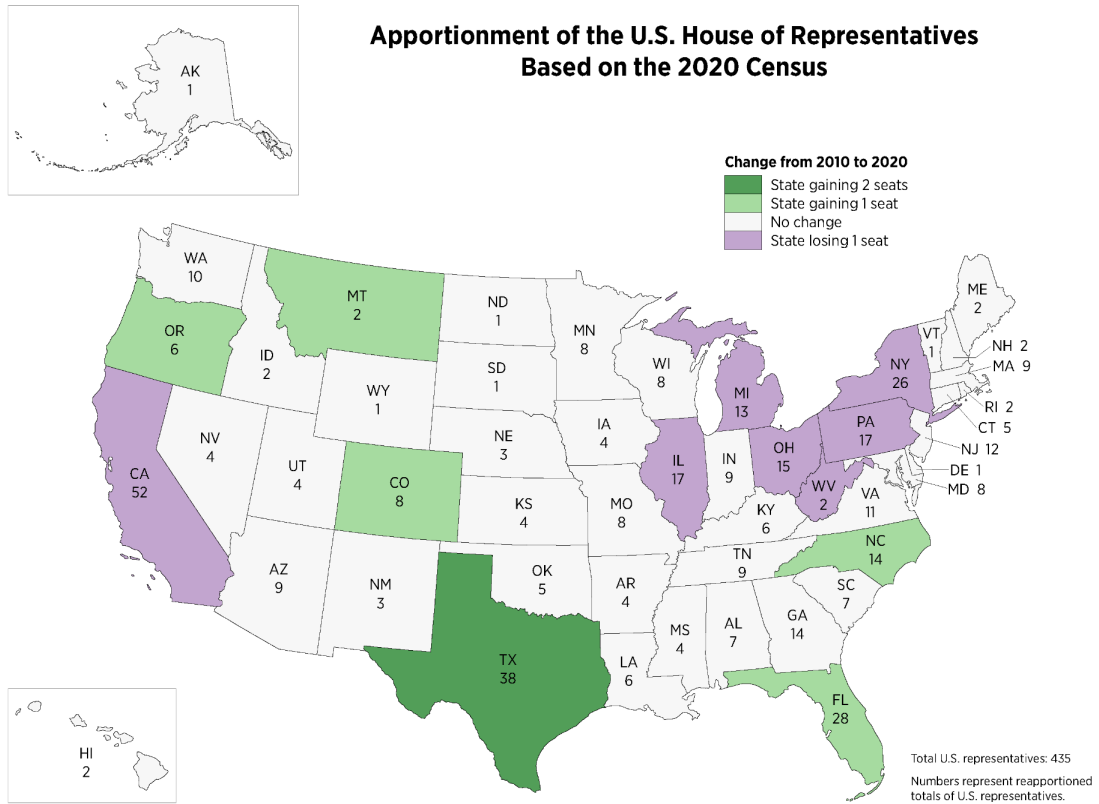
State-by-State Changes

After the [release](#) of the state-by-state population data, the Census Bureau determined that six states will gain Congressional seats and seven states will lose seats (see map below). Texas will gain 2 seats while Colorado, Florida, Montana, North Carolina, and Oregon will each gain one seat. California, Illinois, Michigan, New York, Ohio, Pennsylvania, and West Virginia will each lose one Congressional seat.

This is the first time that California has ever lost a Congressional seat since it became a state. If New York had counted [89 more people](#) than they would have not lost a Congressional seat. Similarly, if Minnesota had counted 26 less residents, it would have lost a Congressional seat.

Previous estimates [indicated](#) that Arizona would gain one Congressional seat, Texas would gain three seats, and Florida would gain two seats. The final count coming in under expectations could potentially stem from an [undercount](#) of the Hispanic

population. The release of the block-by-block population counts later this year should shed further light on that theory.



Redistricting Process

While each state has its own redistricting process, those processes cannot begin until the Census Bureau provides each state with block-by-block population counts. Supreme Court precedents require Congressional districts to be drawn with approximately equal population sizes. They must also be in compliance with [provisions](#) of the Voting Rights Act, as interpreted by federal courts.

State laws can place additional [requirements](#) on state redistricting processes. For example:

- 29 states require compact Congressional districts
- 33 states require contiguous Congressional districts
- 31 states require consideration of existing political subdivisions
- 21 states require the preservation of communities of interest

Based on state laws and [current composition](#) of state governments:

- In 21 states, the redistricting process will be done by a commission or divided government
- In 20 states, Republicans will have sole control of the redistricting process
- In 9 states, Democrats will have sole control of the redistricting process

In practice, states in which one political party has sole control over the redistricting process can lead to gerrymandering, which is the drawing of districts with partisan considerations in mind such that they disproportionately favor the political party in charge. After the 2010 election, Republicans controlled a far larger share of state redistricting processes and were far more aggressive in their gerrymandering efforts.

Redistricting Reform in the For the People Act

In response to rampant gerrymandering in many states, the For the People Act ([H.R. 1/S. 1](#)), introduced by Rep. John Sarbanes (MD) and Sen. Jeff Merkley (OR), includes a number of [redistricting reforms](#) including:

- requiring all states to use independent redistricting commissions
- expressly banning partisan gerrymandering
- creating an expedited statutory legal remedy to challenge gerrymandered districts in court
- creating uniform rules for drawing Congressional districts
- banning mid-decade redistricting

These reforms only apply to the drawing of Congressional districts and not state legislative districts.

The window for any of these requirements to apply to this current round of Congressional redistricting is closing rapidly. With the Senate's delay in advancing the For the People Act, states are functionally running out of time to set up independent redistricting commissions, which could delay the full benefit of redistricting reform until after the 2030 census. While other redistricting requirements would still take effect as soon as the bill is enacted, state legislatures would have the ability to exploit any ambiguities in the law in order to continue to attempt to gerrymander in the absence of commissions.

Some advocates have suggested [additional reforms](#) to build on the redistricting provisions of the For the People Act. Given the timing challenges for the current round of redistricting, additional changes could include making the redistricting criteria more specific, while also providing courts with better guidance on how to interpret those standards.

Some supporters of the bill [believe](#) that it could provide further instructions to courts as to what constitutes a partisan gerrymander and how an unacceptable partisan bias should be determined. For instance, the provision in H.R. 1 and S. 1 that prohibits Congressional districts "unduly favoring or disfavoring any political party" could be modified to include specific limits on partisan asymmetry, including by requiring proportionality as a part of the standard. This could include deleting the bill language that bars the consideration of "the political party affiliation or voting

history of the population of a district” for the express purpose of using it to pursue partisan fairness.

Finally, Congress could include provisions to limit the impact of past Supreme Court decisions that make legal challenges to redistricting more difficult.

Other Proposals

Given the significant levels of gerrymandering with state legislative districts, Congress could also potentially apply redistricting reforms to non-Congressional districts, using its authority under the [Guarantee](#) Clause in the Constitution. .

Additionally, some [election law experts](#) have [proposed](#) that Congress remove the requirement that states have single-member Congressional districts, allowing states to experiment with multi-member districts and alternatives to winner-take-all elections. Last Congress, Rep. Don Beyer (VA) introduced [legislation](#) which would move House elections to multi-member districts that would use ranked-choice voting.

Conclusion

With the release of the apportionment data, we now know how many Congressional districts each state will have. Redrawing can begin once the Census Bureau releases block-by-block data in a few months. The timer for redistricting reform after the 2020 Census is now set.

If redistricting reforms are not in place before this line-drawing begins, however, then any effort to ensure fair representation would instead require lengthy, costly court battles or be delayed to the next redistricting. The next few months are a critical moment to advance and build on the reforms already passed by the House in the For the People Act.