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# POLITICAL BRIEF

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The John C. Stennis Institute of Government

## *WHO'S COUNTING?* Census, Immigration, Representation and Mississippi's Business Environment

### Introduction.

This is not a technical brief about immigration. Immigration is too complicated an issue for a "brief" – no matter how detailed. This document considers one small slice of the immigration pie: the fact that illegal aliens are counted for U. S. Census purposes, and what this means or should mean for Mississippi.

Around the 2000 U. S. Census, Stennis Institute of Government was the first institution in the state to suggest that Mississippi would be losing a congressman. The loss was attributed to population shifts nationwide, including the fact that Mississippi's legal population is not growing at a rapid rate. Subsequent research indicated that the presence of illegal aliens in other states caused Indiana, Michigan and Mississippi to each lose one seat in the U. S. House of Representatives in 2000, and also indicated that Montana would have gained a seat had it not been for illegal immigration to other states.

*Immigration impacts the distribution of seats in the U. S. House of Representatives. Apportionment is based on each state's total population – including illegal aliens and other non-citizens – relative to the rest of the country.*

### A Little Background.

Article 1, Section 2 of the U. S. Constitution mandates that a census be taken every 10 years expressly for the purpose of apportioning seats in the U. S. House of Representatives. The constitution does not specify the method of apportionment or the composition of the population to be imposed. Various methods have been used since 1790 to apportion House seats. The current methodology has been in place since 1940.

A state's population, for apportionment purposes, includes a state's resident population plus all of the state's military and civilian personnel of the federal government and their dependents who are abroad on April 1 of the census year. The resident population is comprised of all persons counted in the census, including those legal immigrants (citizen and non-citizen) and **illegal aliens who either mail their census form back or whose presence in the United States was recorded by a Census Bureau employee in an interview.** The inclusion of illegal aliens in the definition of resident population is probably the most controversial aspect of apportionment.

Two significant cases filed in the decade of the 80's sought to enjoin the U. S. Census Bureau from including illegals in the 1980 and 1990 censuses. Both cases were dismissed on standing issues, so the U. S. Supreme Court has never addressed the question of whether illegal aliens should be included or excluded from the definition of population for purposes of apportioning U. S. House seats. Congress could make the determination to exclude illegal aliens from the definition of population, but has not done so to date.

Reapportionment of the seats in the U. S. House of Representatives by state population each 10 years is a zero sum proposition. One state's gain is another state's loss. There are 435 voting members of the House of Representatives. This figure has remained unchanged since 1911. While Congress could increase the size of the House (the Constitution does not specify a number of House seats), there is an institutional norm that has developed which argues against increasing the size of the body.

Apportionment as performed every 10 years is rather straightforward. Each state is allocated one seat, as required by the Constitution. Then the remaining 385 seats are distributed based on the share of the nation's total population that the state's population represents. (The District of Columbia's population is not included in the calculation.)

### **A Little Analysis.**

If illegal aliens could be distributed equally across the country, their impact on the distribution of U. S. House seats would be minimal. But waves of immigration in American history have always demonstrated that the flow of the foreign born into this country has always been to community clusters – moving from these clusters relatively slowly, almost incrementally by generation. The Immigration and Naturalization Service reports that illegal aliens tend reside in communities in the United States which are even more concentrated than the overall foreign born.

This clustering was further demonstrated by data collected in 2002 which shows that there are 16 states in which the foreign born population is less than 100,000, while six states have foreign born population exceeding one million. You have no doubt heard pundits suggesting that there is something desperately wrong with taking away representation from states composed almost entirely of U. S. citizens so that new districts can be created in states with large numbers of non-citizens. The effect of immigrant-induced reapportionment is very different from reapportionment that occurs when natives relocate to other states. But this is not an article on the politics of immigration. It is an article on how Mississippi can make the best of the *status quo*.

### **A Few Things to Think About.**

Mississippi's illegal aliens are clearly under-measured. One of the reasons for the under-measurement is that many of Mississippi businesses hire illegal aliens but do not provide them a hospitable working environment. Many of Mississippi businesses provide quite the opposite – a working environment that encourages fear by threat and intimidation. As a former Workers' Compensation Commissioner, I've seen it first hand!

One might argue that Mississippi's business owners should not employ illegal aliens. But regardless of that argument, Mississippi business owners do employ illegal aliens, whether they realize it or not. And many realize it or choose to look the other way – checking documentation just enough to keep their businesses legal while profiting from a low-wage, hard-working and eager labor force. If Mississippi business owners provided a hospitable working environment which encouraged community, Mississippi could profit even more!

Allowing enormous numbers of immigrants into the “resident population” definition has the effect of diluting the votes of American citizens living in low-immigration districts while making the votes of American citizens living in high-immigration districts like Mississippi count more – so many immigrants cannot or do not vote that it takes so few votes to win a congressional election. The rule of thumb is that it takes about 100,000 votes to win a congressional seat in the district which is populated primarily by American citizens. However, in 2002, it took only 33,000 votes to win the 34<sup>th</sup> district seat in California and only 42,000 votes to win the 12<sup>th</sup> district seat in New York. Citizens who live in the districts with large immigrant populations have enhanced political power. In districts where a large portion of the population cannot vote, those who do vote have a vote that counts more than citizens in districts where almost everyone is a citizen. Large non-citizen populations take voting power away from Americans in mostly citizen districts and give that power to other Americans in high-immigration districts.

Mississippi is, of course, made up of “low immigration districts” as compared with California, Texas, New York and New Jersey. Thus you can argue that Mississippi votes are diluted by the very fact that most of Mississippi's resident population is capable of voting. But Mississippi's aliens, if counted, could serve to bring back our lost representative.

You see, people argue that it was other states' alien population that cost us a representative in the last census. And that argument is valid. But I pose another argument: an inhospitable working environment has a chilling effect on the number of immigrants who allow themselves to be counted – either by avoiding the Census-Taker or failing to respond by filing a census form. The U. S. Census counts aliens (illegal or no) as part of the resident population. Mississippi's resident population would rise dramatically if all illegal aliens were counted in the census.

In 2000, Mississippi ranked 31<sup>st</sup> in population among the states, with a population of 2,844,658. The U. S. Census Bureau projects that by 2030 Mississippi will rank 37<sup>th</sup> among the states, with a projected population of 3,092,410. That could actually cause us to lose another representative.

Perhaps we should get busy developing the hospitable culture that Mississippi is known for – a culture in which none of Mississippi's residents are afraid to be counted in the census – a culture where all of Mississippi's residents are encouraged to be counted in the census. It's a task we can all take part in, and take pride in. Business should lead the way! Not only can Mississippi business profit from the available and eager immigrant labor force, but the state can profit politically with the aid of our immigrant population.

## ABOUT THE AUTHOR:

### LYDIA QUARLES, J.D.

Lydia Quarles is a Senior Policy Analyst at the John C. Stennis Institute of Government, Mississippi State University. She received her *Juris Doctorate* in 1975 from Cumberland School of Law, Samford University, and her MA and BA from Mississippi University for Women, in 1972 and 1971 respectively, in political science and communication. After over a dozen years in the private practice of law in Alabama and Mississippi, she joined the Mississippi Workers' Compensation Commission as an Administrative Judge in 1993. Eight years later, in 2001, she was appointed Commissioner of the agency. In 2006, she resigned to join the Stennis Institute.

Quarles remains active in bar work, and currently chairs the Women in the Profession Committee, a standing committee of the Mississippi Bar. She also serves as co-chair of the Mississippi Supreme Court's "Gender Fairness Implementation Study Committee" and acts as the Chief Operating Officer of the Workers' Compensation Section of the Mississippi Bar. She is a fellow of the Mississippi Bar Foundation, a recipient of the Mississippi Bar's Distinguished Service Award, a member of the Mississippi School for Math and Science Foundation Board and a member of the MUW Alumni Board. Quarles was recently honored by the American Bar Association's Administrative Law and Regulatory Practice Section, receiving the Mary C. Lawton Award for lasting contributions to the Mississippi Workers' Compensation Commission in the areas of alternative dispute resolution and access for Hispanic workers.

In 2004, Quarles was named one of Mississippi's 50 Leading Business Women by the Mississippi Business Journal; the Journal recognized her service to the State as a Commissioner as well as entrepreneurial skills developed in her property management business in Starkville, Spruill Property Management, LLC

## ABOUT THE INSTITUTE:

Elected to the United States Senate in 1947 with the promise to "plow a straight furrow to the end of the row," John C. Stennis recognized the need for an organization to assist governments with a wide range of issues and to better equip citizens to participate in the political process. In 1976, Senator Stennis set the mission parameters and ushered in the development of a policy research and assistance institute which was to bear his name as an acknowledgment of his service to the people of Mississippi.

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