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Technical *Brief*

Reapportionment & Redistricting 201: Congressional Reapportionment

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Introduction

Every decade, following the decennial census, the U. S. Congress should be reapportioned to reflect population shifts. This is done by a consideration of the same single-member district concepts discussed in the prior technical brief published by the Stennis Institute, *Reapportionment and Redistricting 101*. But in the truest sense, Congressional reapportionment is quite different.
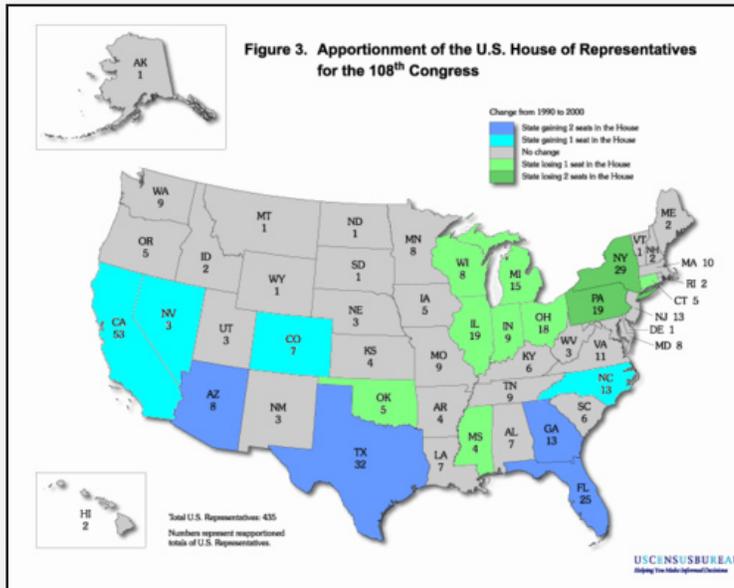
Congressional reapportionment is based on certain "counting" objectives. For example, the congressional reapportionment requires that the entire population be counted. This includes American citizens, legal aliens, illegal aliens, and individuals who are employed by the Department of Defense and are currently residing out of the country. In search of the one man, one vote quest, the system ignores the following issues:

★ Are the citizens of voting age?
★ Are the citizens registered voters?
★ Why are legal and illegal aliens considered in the count,
   if they are not covered by the "one man, one vote" allegory?
★ Does the allocation of Department of Defense employees who are stationed
   out of the country skew the population toward jurisdictions with an ample supply
   of defense installations located within their borders?
★ Who establishes and endorses the directives given to the
   Department of Commerce and the U.S. Bureau of Census?

These questions are answered in part by an examination of census objectives. Additionally, from the numbers gleaned from the decennial census, a different standard is applied for Congressional reapportionment. In Mississippi, we have 1,873,740 registered voters (10/3/2008 statistics) out of 2,910,540 residents, 26.1 percent of whom are under the age of 18, and thus unable, based on age, to be able to vote. The remainder of the unregistered voters are old enough to vote but have not, for various reasons, registered to vote in the state. This would include aliens but also individuals who are simply not engaged in the voting process.

Census Count Objectives

The current method of apportioning seats in the U. S. Congress was adopted in 1941 and uses a mathematical formula to assign a priority value to each House seat. 2 U.S.C. § 2. The formula uses the state's population divided by the geometric mean of that state's current number of seats and the next seat (the square root of $n(n-1)$). The formula distributes seats so that "leftover" fractions of excess population are factored into the apportionment. Previous formulas which had been adopted simply divided the national or state populations by the number of congressional seats, so a state could have fewer seats than its population warranted. National Conference of State Legislatures, Redistricting Law 2000 (February 1999), p. 7.

Figure 3. Apportionment of the U.S. House of Representatives for the 108th Congress

http://www.census.gov/population/www/cen2000/maps/files/map03.pdf

Standards for Congressional Reapportionment

Article 1, § 2 of the U. S. Constitution combines with § 2 of the 14th Amendment to the U. S. Constitution to require that "[representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each State". This obligation has been enhanced by case law after 1962. For example, in the case of Westberry v. Sanders, 376 U.S. 1 (1964), the Supreme Court held that the reapportionment resulting after each decennial census should be "as nearly equal as practicable" and thereafter, in Kirkpatrick v. Priesler, 394 U.S. 526 (1969), rejected an argument that small variations in population between congressional districts were de minimis, noting that "nothing is de minimis" and any variances must be determined to be unavoidable or justified as supporting an acknowledged and valid governmental policy.

In 1983, the Supreme Court reaffirmed its position in Kilpatrick, supra, in the decision of Karcher v. Daggett, 462 U.S. 725 (1983) by noting that there is no level of population inequality among congressional districts that is too small, so long as the plan's challengers can show that the inequality could have been avoided. However, once the challengers of the plan have demonstrated that a method exists to reduce the population inequality among congressional districts within the state, the state assumes the burden to prove that the drawing of the congressional district boundary lines was necessary to achieve a "legitimate state objective".

What qualifies as a legitimate state objective? Karcher, supra, recognizes several in its opinion in chief:

★ Making districts compact
★ Respecting municipal boundaries
★ Preserving the cores of prior districts
★ Avoiding contests between incumbents.

The opinion makes clear, however, that the state must demonstrate with specificity the relationship between the legitimate state objective and the deviation(s) in the proposed boundary lines. The inability to particularly tie the proposal which creates an enhanced degree of inequality among and between districts to a legitimate state objective will result in discrediting the plan.

The standard required for congressional reapportionment differs from the legislative redistricting standards shaped by Courts. The legislative redistricting standard, which will be discussed in detail in a forthcoming technical brief, establishes, as a rule of thumb, a ten percent standard de minimis rule for compliance with standards of equity within voting districts.

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In Mississippi, congressional reapportionment is governed by Mississippi Code Ann., § 5-3-101 (1972) (as amended), which requires the legislative committee charged with reapportionment to follow constitutional standards that may apply and to observe various denominated guidelines, unless such guidelines are inconsistent with constitutional standards, to-wit:

★ Create compact districts composed of contiguous territories, with the boundary crossing governmental or political boundaries the least number of times

★ Create districts that are structured, as much as possible, among county lines; and should county lines be fractured, then election district lines should be followed as nearly as possible.

In 1991, the Standing Joint Congressional Redistricting Committee adopted criteria which included, in addition to the elements established in § 5-3-101, the following:

★ Any redistricting plan should not dilute minority voting strength
★ Any redistricting plan should seek to avoid a political gerrymander
★ Any district must be composed of contiguous territories
★ All districts must be compact
★ Districts should cross county lines the least number of times possible, and if county lines are crossed, election precinct lines should be followed as much as possible.

This Committee worked tirelessly with the results of the 2000 census. An analysis of some of their work is instructive. As a result of the 2000 census, it was determined that the country's apportionment population was 281,424,177. [Apportionment population consists of the resident population of the 50 states plus overseas federal employees (military and civilian) and their dependents who live with them, who were included in their home states. (The population of the District of Columbia is excluded from the apportionment population.)] As a result of Department of Commerce v. House of Representatives, 525 U.S. 316 (S. Ct. 1999), there is no adjustment for over-counting or under-counting in census numbers.

Generally speaking, the average size of a congressional district will rise. While the number of seats in the United States House of Representatives has been constant since 1911 (at 435), the population in the districts continues to rise as population increases. For example, the average size of a congressional district as a result of the 2000 census was 646,952 (about 75,000 more than in the 1990 census), Montana's one seat represented (in 2000 census population numbers) 905,316 people, while Wyoming's one seat represented (in 2000 census population numbers) 495,304.

As a result of population shifts during the decades, Congressional representation reflects regional population trends. For example, while Mississippi lost a seat, four (4) other southern states gained seven (7) seats. Thus, even though Mississippi lost a representative, southern colleagues gained seats. To the extent that there are regional issues for Congressional contemplation, our interests will be supported as a result of the strength of our regional colleagues.

While the goal of apportionment is to produce the most equitable distribution of congressional seats possible, one can see that the variances are actually quite large. This regularly calls into question the one man, one vote concept.

★ ★ ★ ★ ★ DATES TO REMEMBER ★ ★ ★ ★ ★

1. The precise apportionment population count is to be delivered to the President of the United States within 9 months of "census day". Census day occurs during the decennial year, usually in the spring, and the population count is normally delivered to the President very late in that year, often after Christmas.

2. Within a week of the opening session of the U. S. Congress the following year (the year after the decennial census occurs – or in the upcoming case, early in 2011) the President must report to the Clerk of the House the apportionment population counts for each state and the number of representatives to which each state is entitled.

3. Within 15 days of receiving the apportionment population counts from the President, the Clerk of the House must inform the Governor of each state the number of representatives that his state is entitled to receive.

4. Even if the Governor receives information that his state will not be losing or gaining a seat, there may still be a reapportionment issue before the Legislature; this will be based on regional changes in population within the state.

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About the Author

LYDIA QUARLES, J.D., SENIOR POLICY ANALYST, Editor

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.

CLAUDETTE JONES, RESEARCH ASSOCIATE II, Editor & Graphic Designer

Claudette Jones' career spans more than 25 years in media, public relations, and marketing, with a concentration in the built industry, marketing professional services to municipalities, and state and federal agencies. She holds a BFA from Middle Tennessee State University, a MFA from the University of Cincinnati, a MPPA from Mississippi State University, and is pursuing a PhD in Urban and Regional Planning from Jackson State University.

Jones has marketing management and consulting experience in several business sectors including: *Engineering* environmental, civil (site, transportation and aviation), structural, and mechanical, electrical and plumbing (MEP); *Architecture* commercial and residential development, interior design, healthcare, education, corrections, and landscape architecture; *Construction* commercial and residential development; *Military* marketing support for U.S. Air Force aeropropulsion, aerodynamic ground testing, and environmental projects; and *Real Estate* property listing, client relations, and advertising. Her interests include urban and regional planning, affordable housing, green space design and historical preservation, economic and workforce development, and small business initiatives.

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.

The John C. Stennis Institute of Government *at Mississippi State University*