



THE GOAT HILL INTELLIGENCER

A Research Publication of the
Alabama Policy Institute

The 2020 Census and Alabama

Introduction

While Alabama's major metropolitan areas continue to experience healthy growth, the state's population is increasing at a rate that is less than half that of the U.S. as a whole. This poses a problem because the results of the 2020 Census will be used to determine not only a decades-worth of federal government revenue allocations but Alabama's representation in Congress and voice in the Electoral College as well. Assuming a full count, projections suggest that Alabama, along with New York, Illinois, Ohio, Michigan, West Virginia, Pennsylvania, and Rhode Island, will lose a congressional seat and a vote in the Electoral College to states with higher growth rates such as Texas, Florida, Oregon, and Montana (the potential impact of the citizenship question on seat allocation is discussed below).¹ If Alabama is to defy the odds and maintain its seven congressional districts, a full count of Alabama's residents will need to occur. As of September 14, 2020, [83.7%](#) of Alabama households had responded to the 2020 Census, trailing behind the national average of 91.8%.

Principles

Although the Alabama Policy Institute is most focused on the policies of the state government, API is heavily concerned with the interests of Alabama on the national stage as well. An undercount of Alabama residents in the 2020 Census, it is clear, would be detrimental to federal funding rates, Alabama's representation in the U.S. House of Representatives, and the state's importance in future presidential elections. Any organization with an investment in Alabama's future, therefore, should have an interest in a full count of Alabama's residents during the 2020 Census.

The National Battle over Representation

On July 21, 2020, President Trump began a legal battle that tests the Supreme Court's precedent regarding the Census and representation by issuing an Executive Memorandum barring

ISSUE SNAPSHOT

- The results of the 2020 Census will determine Alabama's allocated federal funding and the apportionment of seats in the United States House of Representatives and votes in the Electoral College.
- Alabama's population is increasing at a rate lower than that of the United States as a whole.
- Alabama is predicted to lose a congressional district as a result of the 2020 Census.
- As of September 14, 2020, [83.7%](#) of Alabama households had responded to the 2020 Census, trailing behind the national average of 91.8%.

illegal immigrants from being counted in the computation of Census data. Three states immediately filed suit seeking to block the memorandum's implementation.² A court is yet to rule as to whether the Memorandum will stand.

Some scholars argue that under the 14th Amendment, any person living in America, regardless of immigration status, should be counted for the purpose of Census calculations. The key phrase cited by immigration advocates from the 14th Amendment is "persons", with the argument being that persons does not mean citizens or legal residents alone.³

However, those advocating to include illegal immigrants in current and future Census counts are ignoring the appropriate context of the 14th Amendment. The amendment was ratified on July 28, 1868, just over three years after the end of the Civil War. The intent was to grant equal protection to all Americans and full representation to recently freed slaves who had previously been counted as 3/5 of a person for Congressional apportionment.⁴ The concept of illegal immigration didn't exist at the time of ratification.

Over the past 150 years, the 14th Amendment has guided the



Supreme Court's decisions on a wide array of issues such as access to education, desegregation, affirmative action for school admissions, and was even a deciding factor in the 2000 Bush v. Gore presidential election decision.⁵

The common thread between these decisions is they dealt with issues impacting American citizens and never directly weighed into the rights of illegal immigrants. Even the 2019 ruling in *Department of Commerce v. New York* where the Court ruled against Trump's citizenship question didn't find it unconstitutional to include a citizenship question on Census forms. Rather the Court rejected the Trump administration's reasoning for doing so under the provisions of the Voting Rights Act and essentially told it to find a better justification.⁶

President Trump argues that under the Constitution it is ultimately the power of the President to make the final determination of the number of whole citizens in each state and transmit those determinations and the Census calculation to Congress. It undermines the principles of representative democracy to give more representation to states based on illegal immigrants who have not followed the steps to secure legal immigration status.⁷

The Trump administration also believes that including illegal immigrants in apportionment counts could encourage illicit behavior by incentivizing states to adopt policies that encourage illegal immigration. Not only would including illegal immigrants in the 2020 Census reward states for ignoring federal law, it would also undermine the immigration system as a whole.⁸

Counting illegal immigrants in the Census also gives more political power to those same states flouting federal law. In 2018, Alabama Congressman Mo Brooks filed a federal lawsuit against the Department of Commerce and Census Bureau which challenged the inclusion of illegal immigrants. The suit argued that by including all residents regardless of legal status, states with large immigrant populations receive more votes in the House of Representative, even though illegal immigrants are not eligible to vote. It also gives those same states more votes in the Electoral College.⁹ Additionally, in individual districts where there are more illegal immigrants, those voters who are citizens have more electoral power than those citizens in districts with less illegal immigrants, as there are less voters in total deciding their representative.

This is a clear violation of the "one person, one vote" standard established by the 14th Amendment. Under the current system, the vote of someone in California, with an estimated 2.2 million illegal immigrants, counts more than the vote of an Alabama citizen. It also means that taxpayers in states that ignore immigration law receive more federal benefits per capita than a citizen in a state like Alabama that abides by federal law. Not only is the current system unjust, it is unconstitutional.

Beyond the legal considerations, the executive order could cause logistical problems for the Census Bureau. The COVID-19 pandemic has put the 2020 Census behind schedule. Working with agencies to confirm citizenship status could further prolong the process. There is also the issue of households not responding to the Census. When this happens, the Bureau attempts to "fill in the blanks" based on demographic trends of the respective area. It could leave Census workers guessing as to whether or not households contain illegal immigrants and potentially jeopardize the integrity of the count. A common concern is that the executive order will exacerbate undercounting.¹⁰

The Current Status of the Census and Alabama

Alabama's Population

Between 2018 and 2019, 38 of Alabama's 67 counties lost population.¹¹ While other counties are growing, most notably those suburban areas outside Birmingham, Mobile, and Huntsville, an aging population and relatively low migration level drive Alabama's minimal annual population growth rate of .32% (from 4,887,681 to 4,903,185 between 2018 and 2019).¹² This is lower than that of neighboring states Tennessee, Georgia, and Florida, who are growing at rates of .85%, 1.0%, and 1.1%, respectively, and higher than Mississippi's growth rate of -.16%.¹³ As of September 14, 2020, 83.7% of Alabama households had self-responded to the 2020 Census, trailing behind the national average of 91.8%.¹⁴ Alabama ranks dead last in the nation in this regard.



How Representation in the House of Representatives and Electoral College is Determined

Since the 1940 Census, Congress has used the Method of Equal Proportions to ensure appropriate apportionment of the 435 seats of the House of Representatives.¹⁵ Per the U.S. Constitution, each state is permitted at least one Representative in the House. The remaining 385 seats are assigned to states based on the total population determined in the recently-conducted census through a decades-old, nonbiased formula. There are no politics involved in the seat apportionment, and this method ensures that there are roughly the same number of residents in each congressional district. After the seats are apportioned, it is (mostly) state legislatures which then decide how to draw the boundaries of the congressional districts.

There could be real world consequences to the 2020 executive order. If illegal immigrants are excluded, it could mean that a state like Alabama retains a Congressional seat it would have otherwise been in jeopardy of losing. For states like California and Texas, they may have one less seat than they otherwise would have had if illegal aliens were included in the count.¹⁶

Conclusion

As a result of a slow growth rate, it is likely that Alabama will lose a seat in Congress and the Electoral College after the 2020 Census. Even so, full participation in the Yellowhammer State during the 2020 Census could stymie that change. API, therefore, supports Governor Ivey's "Alabama Counts" initiative and her desire to see every Alabamian counted.



Endnotes

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