

Apportionment and the Census: Fundamental Fairness to U.S. Citizens and Democratic Process

COMMENTARY [Election Integrity](#)

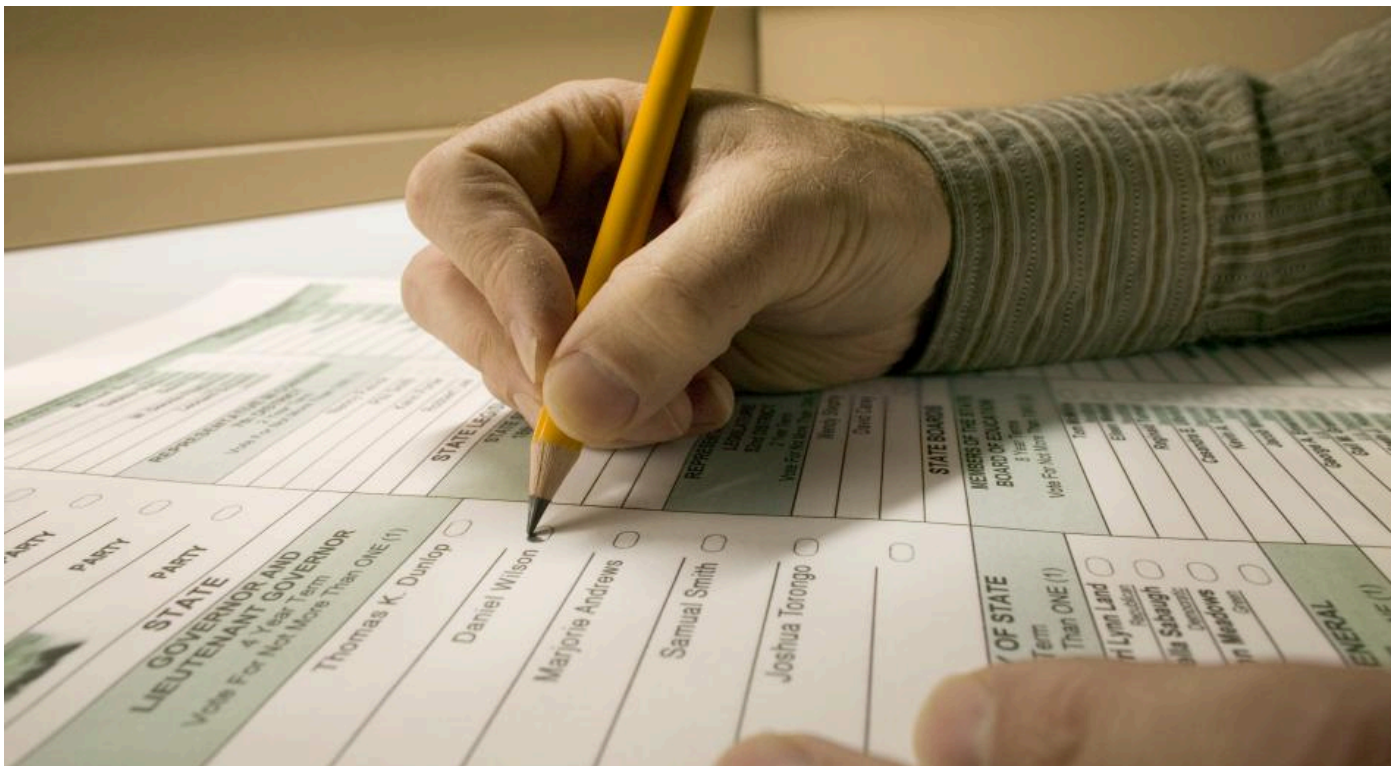
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The large number of aliens in the country, particularly illegal aliens, distort the representation that states have in the House. Andy Sacks / Getty Images

Key Takeaways

States may gain or lose seats after every census, depending on population shifts and as the total population of the country increases.

The growing alien population is unfairly and unjustly altering the political representation of the states in the House of Representatives.

Congress should pass legislation changing the apportionment formula to mandate that it be based solely on the citizen population of the country.

Americans just voted for their representatives in the House of Representatives in the 2022 midterm election, and two years ago, they completed census forms. Both of those activities are the direct result of Article I, Section 2, Clause 3 of the U.S. Constitution—the census clause—which directs that an “actual Enumeration” be conducted every “ten Years” of our population “in such Manner as [Congress] shall by Law direct.”

Although the census is used for many different purposes, including the distribution of federal funds to states, the primary constitutional purpose of the “Enumeration” is apportionment—the determination of the number of seats to which each state is entitled in the House. As Section 2 of the 14th Amendment provides, “Representatives shall be apportioned among the several States according to their respective number, counting the whole number of persons in each State.”

For the first 150 years of our history, the House kept growing as new states were admitted to the Union. But in 1929, Congress passed the Permanent Apportionment Act that limited its size to 435 members. Thus, states may gain or lose seats after every census, depending on population shifts and as the total population of the country increases.

That determination is made under a calculation laid out in federal law known as the “method of equal proportions.” But no matter how small the population of a state is, each state is entitled to at least one representative under the census clause.

>>> [Republicans Can Thank the Federal Gov’s Bungled Census for Their Razor-Thin House Majority](#)

One of the drawbacks of apportionment today is the large number of aliens in the country, particularly illegal aliens, who distort the representation that states have in the House because the Census Bureau includes them in the population count used to determine how many representatives each state should have.

How bad is the distortion? A 2015 report by the Congressional Research Service estimated that if apportionment after the 2010 census had been based solely on the citizen population, it would have shifted seven congressional seats among 11 states. California, a sanctuary state that obstructs enforcement of federal immigration law, would have lost four seats, and Florida, New York and Texas would have each lost one seat. Louisiana, Missouri, Montana, North Carolina, Ohio, Oklahoma and Virginia would have each gained a seat. With the huge influx of illegal aliens in the past decade, that distortion is no doubt even bigger today.

The growing alien population is unfairly and unjustly altering the political representation of the states in the House of Representatives, cheating citizens and devaluing their votes in favor of aliens who have no right to participate in governing this country.

Some argue that the language in Section 2 that apportionment is to be based on the “number of persons in each State” means that aliens must be included in the apportionment calculation. The term “persons,” however, has historically been interpreted to mean individuals who not only have a physical presence but some element of allegiance to a particular place. That is why the Census Bureau, for example, does not include aliens who visit the U.S. on vacation or on business in the population count since they have no political or legal allegiance to any state or the federal government.

If we can exclude aliens who are here temporarily, there is no reason why we should not exclude all aliens who are here, either legally or illegally.

Congress should amend federal law to do two things. First, it should require the secretary of commerce to add a citizenship question back into the census form for the 2030 census and every census thereafter. This was a standard question in the census starting in 1820 until 1950, when the Census Bureau started sending out two census forms, the short form and the long form.

One in 6 households received the long form that contained the citizenship question. The bureau quit using the long form after the 2000 census but then started sending out the American Community Survey on a yearly basis to a small number of households. The ACS has a citizenship question, but that question should be on all census forms. Even apart from apportionment, we should have accurate information on the number of aliens in the country.

>>> [Including Noncitizens in Census Devalues Votes of Citizens, Unjustly Alters House Representation](#)

Such legislation would not be barred by the Supreme Court’s 2019 decision on the Trump administration’s attempt to add a citizenship question to the 2020 census form. The court simply held that the administration had not given a sufficient explanation under federal procedural requirements for its action. Congress has the constitutional authority to pass legislation adding any question it wants on the census form.

Second, Congress should pass legislation changing the apportionment formula to mandate that it be based solely on the citizen population of the country. There is no question that the statute would end up before the Supreme Court in a challenge by the open-

borders crowd who want to extinguish the line between aliens and citizens. Still, the Supreme Court should uphold such a change as being both constitutional and within the power of Congress.

It would be a matter of fundamental fairness to American citizens and the democratic process.

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