

# Our Unconstitutional Census

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Next year's census will determine the apportionment of House members and Electoral College votes for each state. To accomplish these vital constitutional purposes, the enumeration should count only citizens and persons who are legal, permanent residents. But it won't.

Instead, the U.S. Census Bureau is set to count all persons physically present in the country—including large numbers who are here illegally. The result will unconstitutionally increase the number of representatives in some states and deprive some other states of their rightful political representation. Citizens of "loser" states should be outraged. Yet few are even aware of what's going on.

**California could get  
nine House seats it  
doesn't deserve because  
illegal aliens will be  
counted in 2010.**

In 1790, the first Census Act provided that the enumeration of that year would count "inhabitants" and "distinguish" various subgroups by age, sex, status as free persons, etc. Inhabitant was a term with a well-defined meaning that encompassed, as the Oxford English Dictionary expressed it, one who "is a bona fide member of a State, subject to all the requisitions of its laws, and entitled to all the privileges which they confer."

Thus early census questionnaires generally asked a question that got at the issue of citizenship or permanent resident status, e.g., "what state or foreign country were you born in?" or whether an individual who said he was foreign-born was naturalized. Over the years, however, Congress and the Census Bureau have added inquiries that have little or nothing to do with census's constitutional purpose.

By 1980 there were two census forms. The shorter form went to every person physically present in the country and was used to establish congressional apportionment. It had no question pertaining to an individual's citizenship or legal status as a resident. The longer form gathered various kinds of socioeconomic information including citizenship status, but it went only to a sample of U.S. households. That pattern was repeated for the 1990 and 2000 censuses.

The 2010 census will use only the short form. The long form has been replaced by the Census Bureau's ongoing American Community Survey. Dr. Elizabeth Grieco, chief of the Cen-

sus Bureau's Immigration Statistics Staff, told us in a recent interview that the 2010 census short form does not ask about citizenship because "Congress has not asked us to do that."

Because the census (since at least 1980) has not distinguished citizens and permanent, legal residents from individuals here illegally, the basis for apportionment of House seats has been skewed. According to the Census Bureau's latest American Community Survey data (2007), states with a significant net gain in population by inclusion of noncitizens include Arizona, California, Florida, Illinois, Nevada, New Jersey, New York and Texas. (There are tiny net gains for Hawaii and Massachusetts.)

This makes a real difference. Here's why:

According to the latest American Community Survey, California has 5,622,422 noncitizens in its population of 36,264,467. Based on our round-number projection of a decade-end population in that state of 37,000,000 (including 5,750,000 noncitizens), California would have 57 members in the newly reapportioned U.S. House of Representatives.

However, with noncitizens not included for purposes of reapportionment, California would have 48 House seats (based on an estimated 308 million total population in 2010 with 283 million citizens, or 650,000 citizens per House seat). Using a similar projection, Texas would have 38 House members with noncitizens included. With only citizens counted, it would be entitled to 34 members.

Of course, other states lose out when noncitizens are counted for reapportionment. According to projections of the 2010 Census by Election Data Services, states certain to lose one seat in the 2010 reapportionment are Iowa, Louisiana, Massachusetts, Michigan, New Jersey, New York, Ohio and Pennsylvania; states likely (though not certain) to lose a seat are Illinois, Minnesota, Missouri, and Ohio could lose a second seat. But under a proper census enumeration that excluded illegal residents, some of the states projected to lose a representative—including our own state of Louisiana—would not do so.

The census has drifted far from its constitutional roots, and the 2010 enumeration will result in a malapportionment of Congress.

In the 1964 case of *Wesberry v. Sanders*, the Supreme Court said, "The House of Representatives, the [Constitutional] Convention agreed, was to represent the people as individuals and on a basis of complete equality for each voter." It ruled that Georgia had violated the equal-vote principle because House districts

within the state did not contain roughly the same number of voting citizens. Justice Hugo Black wrote in his majority opinion that "one man's vote in a congressional election is to be worth as much as another's." The same principle is being violated now on a national basis because of our faulty census.

The Census Bureau can of course collect whatever data Congress authorizes. But Congress must not permit the bureau to unconstitutionally redefine who are "We the People of the United States."

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