

State Notes

TOPICS OF LEGISLATIVE INTEREST

Spring 2020



An Overview of the 2020 Census and What It Means for Michigan **By Stephen Jackson, Legislative Analyst**

Introduction

Every 10 years, the United States Census Bureau conducts a census to count the number of people living in the US and to collect basic demographic, such as age, sex, race, and ethnicity, and housing information. The decennial census is mandated by Article I, Section 2 of the US Constitution, which provides that: "The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such manner as they shall by Law direct". The decennial census provides a snapshot of the United States that determines how seats in the US House of Representatives are apportioned, how states redraw congressional and legislative districts, how Federal funding is distributed, and how businesses make decisions.

This article provides a brief history of the decennial census and a general overview of how the census works, and also explores the implications the 2020 Census will have on Michigan over the next decade and some of the challenges facing the 2020 Census.

Brief History of the Decennial Census

The first census was conducted in 1790 under the direction of then-Secretary of State Thomas Jefferson.¹ The decennial census was conducted under the authority of the Secretary of State until the Department of Interior assumed responsibility for it in 1849. Beginning in 1850, Congress established a temporary census office before each census to direct operations and organization. The Permanent Census Act of 1902 established the Census Office as a permanent agency within the Department of Labor. One year later, the Census Office was renamed the Bureau of the Census (more commonly referred to as the Census Bureau) and was relocated to the Department of Commerce and Labor. In 1913, when the Department of Commerce and Labor was split into separate departments, the Census Bureau remained with the Department of Commerce, where it is still housed today. In addition to the decennial census, the Census Bureau also conducts an economic census and a census of state and local governments every five years, and conducts surveys on behalf of various Federal and local government agencies on topics such as housing, crime, employment, and consumer spending.

Although the Secretary of State oversaw the early national censuses, most of the groundwork for conducting the census was done at the state and local level by US marshals from 1790 to 1870. The Census Act of 1880 replaced the US marshal with specially hired and trained enumerators to carry out the census. Detailed Federal legislation guided the early censuses, specifying the questions to be asked and giving census takers detailed instructions on how to conduct the census. However, as census operations were centralized within the Federal government in the late 1800s, census-related legislation became less detailed and, instead, focused on broad categories of questions to be asked. In 1954, existing laws governing the Census Bureau were codified in Title 13 of the US Code, which continues to govern how the census is conducted and how data are handled today.

The 1790 Census collected information on each head of household, and counted the number of each of the following in the household: 1) free white males over the age of 16, 2) free white men under 16 (to determine how many men could be eligible for military service), 3) free white females, 4) all other free people, such as Native Americans who paid taxes, and 5) slaves.² The 1790 Census, which took 18 months to complete, counted 3.9 million people.

However, as the nation's needs and interests became more complex, the decennial census changed accordingly. For example, the 1810 Census made the first inquiry into manufacturing, questions on agriculture, mining, and fishing were made in 1840, and in 1850, the census included questions on taxes, religion, poverty, and crime.³ Beginning in 1900, Congress limited census questions to agriculture, manufacturing, and mortality, but many of the topics that were eliminated later reappeared as technological advancements made it possible to process and publish data quicker.

Throughout the first half of the 1900s, changes were adopted to improve the census, including the use of new statistical sampling techniques and computers, and mail enumeration. These changes allowed data to be collected and published quicker and reduced the burden on respondents.

How the Decennial Census Works

Each census year (years ending in '0'), the enumeration begins in remote areas of Alaska in January. In 2020, the first enumeration took place in Toksook Bay, Alaska on January 21.⁴ In mid-March, the public began receiving invitations by mail to participate in the census. Historically, respondents could complete the census by mail or phone, or in-person, if they failed to respond by mail or phone. The 2020 Census marks the first time that individuals also can respond online. In 2020, individuals will be able to respond online or by phone in English or twelve other languages, and the Census Bureau will provide online guides and videos in 59 non-English languages and in American Sign Language. Census Day is officially observed on April 1. By this date, every household will have received an invitation to participate in the census. As of June 1, 2020, the Census Bureau estimates that 60.5% of households in the US already had self-responded to the 2020 Census (the Census Bureau estimates that Michigan had a self-response rate of 67.1%). From mid-May through July, census-takers will go door-to-door to collect responses from households that did not self-respond.

In 2010, the Census Bureau developed a short-form census questionnaire that asks how many people were living or staying in the household on April 1 (this means everyone living and sleeping in the household most of the time, and includes children, roommates, and friends or family members who were living in the household, even temporarily); the age, sex, race, and ethnicity of each household resident; his or her relationship to the person filling out the form; and whether a member of the household rented or owned the housing. The 2020 Census will continue use of the short-form, and also will be the first time that cohabitating same-sex couples explicitly will be counted.⁵ The more detailed socioeconomic and housing data collected by the census long-form now are collected by the American Community Survey (ACS), an ongoing survey of about 250,000 households per month.

College students are counted where they live while attending school. If they live in university or college housing, they are counted by school officials and do not need to respond. If they live off-campus in private housing, however, they must respond to the census and are encouraged to use their off-campus address.

Participation in the decennial census and the ACS is mandatory.⁶ Refusing to answer any question on the census or ACS, or willfully providing false information could result in a maximum fine of \$5,000. (Title 13 USC § 221 states that refusal to answer any question on the census may result in a maximum fine of \$100, and that willfully providing false information is punishable by a maximum fine of \$500. The Sentencing Reform Act of 1984, codified in Title 18 of the US Code, effectively increased the maximum fine to \$5,000.) No one has been prosecuted for a failure to respond since 1970.⁷

Title 13 USC §§ 2 and 214 require the US Census Bureau to keep respondents' information confidential. A US Census Bureau employee who violates these provisions is subject to a maximum fine of \$250,000 or up to five years' imprisonment, or both. Census records are kept confidential for 72 years, after which the National Archives releases them to the public. Records from the 2020 Census will be made public in April 2092.

Once the decennial census is complete, Title 13 of the US Code requires the Secretary of Commerce to deliver the apportionment population count for each state to the President within nine months of the census date, and specifies that the census date is April 1 of the census year. This means that the President must receive the counts by December 31. (Apportionment population reflects the total resident population in each of the 50 states, including minors, noncitizens, Armed Forces personnel and their dependents living overseas, and Federal civilian employees and their dependents living overseas.⁸) Title 2 of the US Code requires the President to report, within one week after the next session of Congress begins, to the Clerk of the US House the apportionment population counts for each state and the number of representatives each state will receive. Within 15 days after receiving the apportionment counts, the Clerk of the US House must inform each governor the number of representatives to which his or her state is entitled.

Implications for Michigan

Although it has seen a net growth in population since the 1970 Census, Michigan's population growth rate has been slower compared to other states. From 1950 to 2000, the five fastest-growing states were (in rank order) Nevada, Arizona, Florida, Alaska, and Colorado.⁹ During this period, seven states' populations at least tripled, and the populations in 11 additional states more than doubled. These states primarily are in the South or West. Meanwhile, states in the Midwest and Northeast saw less population growth. Michigan saw only an approximately 56.0% population growth from 1950 to 2000. Many surrounding states in the Great Lakes region saw similar or less growth during that same period. Between 2000 and 2010, Michigan lost population, the only state in the US to do so.¹⁰

In 2018, Michigan's population was roughly 9.98 million. Although Michigan has gained residents since 2010, between 2010 and 2018 its population grew only 1.02%, while in the US the nationwide population growth rate was nearly 6.0%.¹¹ Michigan's five most populous

Changes in Michigan's population, both relative to other states and within the State, will have a significant impact on how many seats Michigan will be apportioned in the US House, on redistricting the State's congressional and legislative districts, and on the distribution of Federal funds that Michigan receives.

Apportionment

One of the more widely understood reasons for conducting the decennial census is apportionment. Apportionment (or reapportionment) refers to the process of dividing the seats in the US House of Representatives among the states every 10 years following a national census. Article I, Section 2 of the US Constitution, in conjunction with the 14th Amendment, requires the seats in the US House to be divided among the states based on each state's population.¹² Article I, Section 2 limits the number of representatives to not more than one for every 30,000 people, and specifies that each state must receive at least one representative. Federal statute requires apportionment to be take place every 10 years.¹³ Additional guidelines and constraints for apportionment, such as timelines for the process, the number of seats in the US House, and the method by which the seats are divided among the states, also have been established through Federal law.

Currently, there are 435 seats in the US House.¹⁴ The US Constitution mandates that each state receive at least one representative. The remaining seats are apportioned using a mathematical approach called the "method of equal proportions", which Congress adopted in 1941. This method assigns seats according to a "priority value" determined by multiplying the state's population by a multiplier.¹⁵

Based on the 2010 Census, the US population was approximately 309.2 million, a 9.9% increase since 2000. According to the US Census Bureau, following the 2010 Census, the average population per US House seat was 710,767 (an increase from a population of 646,952 per seat following the 2000 census).

Since the number of seats in US House was capped at 435, Michigan has been apportioned as many as 19 seats and as few as 12. Since reaching its high of 19 in 1970, however, Michigan has lost at least one seat following each decennial reapportionment. Following the 2010 Census, Michigan was apportioned 14 seats in the US House of Representatives, down from 15 seats following the 2000 Census. According to the 2010 Census, Michigan's population was approximately 9.88 million, down from approximately 9.94 million following the 2000 Census. Based on these data, in 2010, each of Michigan's 14 congressional districts was composed of roughly 705,700 residents. Most projections indicate that Michigan will lose an additional seat following the 2020 Census.

Redistricting

Redistricting is the process of redrawing state legislative and congressional electoral district boundaries following the decennial census. Although the US Constitution requires that congressional apportionment be based on an "enumeration" of the US population, it generally is silent on what census data are to be used for the redistricting process.¹⁶

According to the National Conference of State Legislatures, 21 states explicitly require the use of census data for redistricting. An additional 17 states, including Michigan, rely on census data for redistricting even though that reliance is not prescribed by state law. Six states—Alabama, Maine, Nevada, New Hampshire, Oregon, and South Carolina—allow the use of census data or other datasets for redistricting, depending on certain circumstances. The remaining six states (Arkansas, Hawaii, Indiana, New York, Ohio, and Texas) do not fit into any of the above categories, but generally require the use of census data, unless they are unavailable, in which case each state has its own laws that specify the data that can be used for redistricting.

In the majority of states, the state's legislature is responsible for drawing its legislative and congressional maps. Often, legislative and congressional maps drawn by state legislatures are subject to veto by the state's governor. Some states use special commissions that assist those states' legislatures in drawing the maps, or that draw the maps in the absence of a legislative agreement. In other states, an independent commission has primary responsibility for drawing legislative and congressional districts. Regardless of which redistricting method a state employs, all states must comply with certain Federal constitutional and statutory requirements pertaining to population and nondiscrimination.

The US Supreme Court has interpreted the US Constitution to require that a state's congressional districts be approximately the same population. This principle has come to be known as "one person, one vote".¹⁷ In a 1964 case, *Wesberry v. Sanders*, the US Supreme Court interpreted Article I, Section 2 of the US Constitution to require that "as nearly as is practicable, one man's vote in a congressional election is to be worth as much as another's."¹⁸ Later that same year, the Court issued *Reynolds v. Sims*, in which it held that the "one person, one vote" standard applies to state legislative redistricting.¹⁹ Because congressional and legislative districts are required to be approximately the same population, it is important that states have accurate population data based on the decennial census.

In addition to complying with the equal population requirements, districts also must comply with the Voting Rights Act (VRA). Congress enacted the VRA under its authority to enforce the 15th Amendment to the US Constitution, which provides that rights of citizens to vote cannot be denied or abridged on account of race, color, or previous servitude. Section 2 of the VRA prohibits voting practices and procedures, including the redrawing of redistricting plans, from discriminating on the basis of race, color, or membership in a language minority group. It prohibits voting practices and procedures that are intended to be racially discriminatory and those that have a racially discriminatory effect.

The Michigan Constitution calls for 110 State House districts and 38 State Senate districts.²⁰ Until recently, Article IV, Section 6 of the Michigan Constitution created the Commission on Legislative Apportionment, which was responsible for drawing the State's legislative districts, and prescribed certain apportionment factors and rules for drawing the districts.²¹ For instance, districts had to be appointed under a weighted formula based on land area and population.²²

In 2018, Michigan voters approved Proposal 18-2, which amended Article IV, Section 6 to delete existing constitutional provisions pertaining to the legislative redistricting, and to create the Independent Citizens Redistricting Commission, which is responsible for proposing and

adopting the State's congressional and legislative districts.²³ For proposing and adopting each redistricting plan, the Commission must consider certain criteria. In order of priority, districts must: a) be of equal population as mandated by the US Constitution, and comply with the VRA and other Federal laws, b) be geographically contiguous, c) reflect the State's diverse population and communities of interest; d) not provide a disproportionate advantage to any political party; e) not favor or disfavor an incumbent; f) reflect county, city, and township boundaries; and g) be reasonably compact.

Although the number of seats in the Michigan Senate and the Michigan House of Representatives will not change following the 2020 Census, districts will need to be redrawn to reflect shifts in population and to conform to the criteria prescribed in the 2018 constitutional amendment.

Federal Funding

In addition to apportionment and redistricting, data from the decennial census are used to allocate hundreds of billions of dollars in Federal funding to states, local communities, and individuals. Programs that receive funding specifically through Federal grants include, but are not limited to, the National School Lunch Program, Supplemental Nutrition Program for Women, Infants, and Children, Supplemental Nutrition Assistance Program, Children's Health Insurance Program (CHIP), Medicaid, Child Care and Development Block Grant, Head Start, and Early Head Start. Federal funding allocated following the decennial census also is used for hospitals, fire departments, roads, public works, and other critical programs and services.

Population is one of the main datasets the Federal government uses to allocate or determine eligibility for Federal funds. For example, the US Department of Transportation uses population to define eligible areas for Urbanized Area Formula Grants, and to determine how much funding should be apportioned to those areas. Federal agencies also look at housing and demographic data to allocate and determine eligibility for funds. For example, the US Department of Housing and Urban Development apportions Community Development Block Grants based on area population, population growth, housing overcrowding, and age of housing stock. Additionally, programs use a combination of population and other characteristics to allocate and determine eligibility for funds. For example, the Medical Assistance Program (Medicaid), allocates funds based on the Federal Medical Assistance Percentage, which is based on per capita income.²⁴

In fiscal year (FY) 2017, 316 different Federal spending programs relied on 2010 Census data to distribute over \$1.5 trillion to states, local governments, nonprofits, businesses, and households, in the form of financial assistance programs.²⁵ These programs vary in size (e.g., Medicare Parts A, B, and D account for 47.4% of census-derived data), geographic focus (e.g., metropolitan vs. micropolitan; urban vs. suburban vs. rural; and local vs. state), and the extent to which they rely on and use census-guided data. Almost all programs use census-derived data to determine the amount of spending or services provided to each eligible area or household, and roughly 40% use census-derived data to determine eligibility to receive funding.

In FY 2016, Michigan received \$29.2 billion through 55 Federal spending programs based on data from the 2010 Census, including \$1.1 billion for highway planning and construction, \$16.0 billion for health programs, \$5.0 billion for education, \$2.3 billion for food assistance programs, and \$1.5 billion for housing assistance.²⁶ In FY 2017, Michigan received almost \$48.7 billion from census-guided Federal spending.²⁷

Challenges for Census 2020

Hard-to-Count Populations and Places

Although the census is intended to be a complete count of all people living in the US, people are always missed. Many of the people at risk for not being counted belong to hard-to-count populations, such as racial and ethnic minorities, young children, low-income households, and noncitizens; or those who live in hard-to-count places, such as housing complexes or rural and remote areas.

According to the Census Bureau, the 2010 Census overcounted the non-Hispanic white-only population by 0.8%. However, it estimates that it undercounted 2.1% of the black population, 1.5% of the Hispanic population, 1.3% of the Native Hawaiian and other Pacific Islander populations, and 4.9% of Native Americans and Native Alaskans living on reservations. It also undercounted men in age groups 18 to 29 and 30 to 49, but overcounted women 30 to 49. Additionally, an estimated 1.0 million children under the age of five were not counted.²⁸ Individuals age 20 to 24 and those over age 60 were overcounted because college students and "snowbirds" (i.e., individuals who move from warmer, southern parts of the US in the winter to colder, northern climates during the summer) often are counted twice.²⁹

In June 2019, the Urban Institute released its "high-risk" scenario that projected that more than 4.0 million black, Hispanic, and Latinx residents were at risk of not being counted in the 2020 Census.³⁰ This projection was based on a range of challenges that could undermine the accuracy of the census, including the Trump administration's proposed inclusion of a citizenship question that ultimately was not included on the 2020 Census form.³¹

Obtaining an accurate census count in rural and remote areas also is challenge. For example, census-takers begin the enumeration in Alaska in January because more than 80% of Alaskan communities are not connected by roads or highways.³² Although the 2020 Census will allow people to respond online, many areas of Alaska do not have reliable internet connection. The geography and unreliability of the mail system and internet connection require census-takers to knock on doors before the snow and ice begin melting. In many remote rural areas, residents may not use conventional address and their homes often are hidden from main roads, which makes it difficult for census-takers to find these residences.³³ Rural areas within agricultural economies often have large number of migrant and seasonal farmworkers, who the Census Bureau considers hard-to-count populations.

Lack of internet and broadband connectivity also poses challenges for urban, rural, and remote areas in the US for the 2020 Census. The American Community Survey, which asks if households have a computer and access to broadband, reveals that there are substantial racial, income, and geographic differences when it comes to broadband access. For example,

in 2017, 90% of Asian households and 83% of white households had broadband service, while 76% of black households and 71% of Native American households had access. On an income basis, 92% of households with an annual income over \$150,000 had broadband subscriptions, but only 70% of households in which the income was below \$20,000 had access to broadband internet. Geography also plays an important role in broadband availability. A 2018 study by the Pew Research Center found that 58% of rural Americans believe access to high speed internet is a problem in their area, whereas only 13% of Americans who live in urban areas and 9% of Americans who live in the suburbs view access high-speed internet as a major problem in their area. Additionally, only 65% of counties in which 100% of the population is in a rural area have some kind of broadband internet subscription, according to Census Bureau statistics.

An many as 1.8 million Michigan residents are considered "hard to count" by the Census Bureau.³⁴ In 2010, the City of Detroit had only a 64% participation rate, the lowest of any rate among major cities in the US.³⁵ For every resident not counted, Michigan could lose as much as \$1,800 per person per year in Federal funds.³⁶

In June 2019, Governor Gretchen Whitmer issued Executive Order (EO) 2019-15, which created the 2020 United States Census Complete Count Committee, which consists of various elected officials and members from organizations and communities across the State. The Committee is tasked with ensuring a complete and accurate census count in Michigan so that the State receives the correct amount of Federal funding and accurate representation in the US House.

Public Act (PA) 207 of 2018 allocated \$2.5 million for census outreach and preparation for the 2020 Census. Under PA 207, for every \$4 in private funds received, the State allocates \$1, up to \$500,000, in State contributions. The remaining \$2.0 million was allocated to the Michigan Nonprofits Census Campaign, headed by the Michigan Nonprofit Association. Public Act 28 of 2019 allocated an additional \$5.0 million to help ensure an accurate count in rural and urban areas.

In February, the State announced the kickoff of the "Be Counted" Campaign, a \$16.0 million collaborative advertising campaign between Michigan, the US Census Bureau, and the Michigan Nonprofit Association. The "Be Counted" campaign states that its goal is to reach 82% statewide participation in the 2020 Census (Michigan had 78% statewide participation in the 2010 Census). Governor Whitmer declared April 1, 2020, as "Take a Break and Be Counted" Day, in order to promote awareness of and participation in the 2020 Census.

Cybersecurity and Social Media Misinformation

As noted above, 2020 will be the first time respondents will be able to fill out the census online. The Census Bureau estimates that around 55% of households that self-respond will complete the census online. The Census Bureau's hope is that a digital census will make the count more inclusive and, eventually, help to lower costs. However, the administration of the first online census does come with concerns, including cybersecurity risks, online disinformation, and technical issues.

In July 2019, the US Senate Homeland Security and Governmental Affairs Committee held a hearing to examine the security of the census. Officials from the Government Accountability Office (GAO), which had added the US Census Bureau to a list of high-risk programs because of cybersecurity and information shortfalls, testified at the hearing that the GAO had identified over 330 corrective actions pertaining to securing the census against cyber incidents.³⁷ At this hearing, the Director of the Census Bureau testified that the agency was prepared to secure respondents' personal data. According to the Census Bureau website, its cybersecurity meets the highest standards for protecting information, and its technology is protected by strong authentication and authorization methods.

During a February 2020 US House Oversight Committee hearing, the GAO released a report stating that the census was designated a high-risk area. The potential for a cybersecurity breach could be compounded by the spread of social media misinformation.³⁸ The report states the Bureau needs to address concerns related to the readiness of its Internet response system, and that it continues to face cybersecurity challenges, including responding to cybersecurity recommendations from the Department of Homeland Security and addressing other cybersecurity concerns, such as protecting the privacy of respondent data, in a timely manner.³⁹

Before the rollout of the 2020 Census, some public officials expressed concerns that foreign governments and "Internet trolls" would use social media platforms, such as Facebook, Twitter, and YouTube, to interfere with census efforts.⁴⁰ In December 2019, National Public Radio (NPR) reported that Facebook updated its advertising policy to ban ads describing participation in the census as useless or meaningless on Facebook and Instagram, and that it also would remove posts misrepresenting how and when the census is conducted and who can participate. Facebook also updated its Community Standards policy, banning misleading content stating that participating in the census could lead to a person's arrest, deportation, or imprisonment. In January 2020, Pinterest announced that it would remove misleading content about who can participate in the 2020 Census. YouTube followed suit in February 2020, stating that it would ban videos spreading false information about participating in the 2020 Census.⁴¹ The Census Bureau also asked consumer protection groups, such as the Better Business Bureau and AARP, to gather reports on the spread of misleading information.

COVID-19

In addition to the more standard concerns about obtaining an accurate census count, the novel coronavirus disease 2019 (COVID-19) pandemic brings its own unique challenges to the 2020 Census. In March, NPR reported that the Census Bureau decided to delay its early round of door-knocking by census workers in college towns because of the COVID-19 pandemic. The Census Bureau also delayed its outreach efforts to send census-takers in to communities with electronic tablets to help people submit their census responses online, and suspended field operations. Beginning in mid-March, governors in most states started issuing "stay-at-home" executive orders prohibiting nonessential travel and requiring social distancing, halting door-to-door census data collection.

In mid-April the US Census Bureau sent a request to Congress asking for a 120-day delay on some census data-reporting deadlines, extending the data collection window from mid-August

to October 31, 2020.⁴² It also requested to extend from December 31, 2020, to April 30, 2021, the deadline for delivering apportionment population counts to the President, and to move, from March 31, 2021, to July 31, 2021, the deadline for providing to state redistricting officials census data required to redraw voting districts. Moving these reporting deadlines would require Congress to pass, and the President to sign, legislation.

Because of Governor Whitmer's issuance of stay-at-home orders,⁴³ State officials encouraged Michigan residents to fill out the census online. On April 13, 2020, Michigan 2020 Census launched its "Seven Days of Action", a statewide outreach effort asking Michigan residents to reach out (virtually) to family, friends, and community members to encourage them fill out their census forms.

The Census Bureau began resuming field operations in certain states in early May. Field operations in all 50 states and the US territories are expected to resume by mid-June. The Area Census Officers (ACOs) in Lansing and Traverse City resumed operations the week of May 25, 2020, and the ACOs in Detroit, Oakland County, and Macomb County resumed operations the week of June 1, 2020.

Conclusion

The 2020 Census will have a substantial impact on Michigan over the next decade. It will shape how Michigan residents are represented in Washington, DC, and in Lansing because of apportionment and redistricting, and will account for a significant portion of the funds the State uses to provide services and programs to Michigan residents. While the 2020 Census offers some new opportunities that could make future censuses more accurate, easier to conduct, and less costly, it also faces unique challenges whose impacts have yet to be determined. For more information on the 2020 Census, visit www.census.gov or www.michigan.gov/census2020.

ENDNOTES

¹ U.S. Census Bureau: History of the Census, U.S. Census Bureau; Factfinder for the Nation: History and Organization, U.S. Census Bureau, May 2000.

² *Id.*

³ Note 1.

⁴ Wang, Hansi Lo, "Why the U.S. Census Starts in Alaska's Most Remote, Rural Villages", *NPR*, 1-21-19.

⁵ "2020 Census: LGBTQ+", U.S. Census Bureau. Retrieved on 4-12-20.

⁶ 13 USC § 221.

⁷ Nethercutt, George, "Answering the US Census is your civil - and legal - duty", *The Hill*, 4-2-18.

⁸ Eckman, Susan, "Apportionment and Redistricting Process for the U.S. House of Representatives", Congressional Research Service, October 2019.

⁹ Hobbs, Frank, *et al.*, "Demographic Trends in the 20th Century", U.S. Census Bureau, Nov. 2002.

¹⁰ Mackun, Paul, *et al.*, "Population Distribution and Change: 2000 to 2010", U.S. Census Bureau, Mar. 2011; Newton, Jordan, "2020 Census Likely to Rob Michigan of Another Congressional Seat. Rural Reps? Get Ready for More Driving", Citizens Research Council of Michigan, July 25, 2018.

¹¹ "Michigan Population, by County", Senate Fiscal Agency, 1-29-20.

¹² "Representatives...shall be apportioned among the several States which may be included within this Union, according to their respective Numbers..." U.S. Const. art. I, § 2; "Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed." U.S. Const. amend. XIV § 2.

¹³ 2 USC § 2a

¹⁴ The Apportionment Act of 1911 first fixed the size of the US House at 435 seats. It increased the number of members from 391 to 433 and contained provisions to add two additional members when New Mexico and Arizona became states. In 1920, Congress failed to apportion the US House for the first time following a decennial census (although the US Constitution requires a census to be completed every 10 years no such requirement exists for apportionment). The Apportionment Act of 1929, as amended by the Apportionment Act of 1941, provided for automatic reapportionment instead of requiring Congress to pass a new apportionment law after each census, and capped the number of US House seats at the level following the 1920 Census (435). When Alaska and Hawaii were granted statehood in 1959, each was allocated one seat, temporarily increasing the number of seats to 437 until the next apportionment returned it to 435.

¹⁵ For a more thorough explanation of how apportionment works, see Crocker, Royce, "The U.S. House of Representatives Apportionment Formula in Theory and Practice", Congressional Research Service, 4-2-10.

¹⁶ U.S Const. art. I, § 9.

¹⁷ See *Gray v. Sanders*, 372 U.S. 368 (1963) (holding that the conception of political equality means one person, one vote).

¹⁸ 376 US 1, 7-8 (1964).

¹⁹ 377 US 533 (1964) (holding that the Equal Protection Clause requires that all who participate in an election have an equal vote).

²⁰ MI Const. art. IV, §§ 2-3.

²¹ Previously, Article IV, Section 6 of the Michigan Constitution established a Commission on Legislative Apportionment, a bipartisan commission responsible for drawing the State Senate and House of Representatives districts following each decennial census. Article IV, Section 6 also prescribed certain apportionment rules and factors for drawing the districts. However, on three separate occasions - 1964, 1972, and 1982 - the Commission was unable to adopt a redistricting plan, and on each occasion the matter had to be resolved by the Michigan Supreme Court. Following the 1990 Census, when the Legislature failed to adopt a redistricting plan, the Michigan Supreme Court

appointed a special panel of three judges to consider plans submitted by different sources, including both major political parties. However, the panel found that none of the plans conformed to the to the 1982 standards prescribed by the Court, so the panel adopted its own redistricting plans for the State legislative and congressional districts. Following the 2000 and 2010 Censuses, the Governor's office and both houses of the Legislature were under unified control, and redistricting plans were adopted without court involvement.

²² In *Reynolds v. Sims*, the US Supreme Court held that provisions establishing weighted land area-population formulae violate the Equal Protection Clause of the US Constitution.

²³ For more information on Proposal 18-2 and the Independent Citizens Redistricting Commission, see "November 2018 Ballot Proposal 18-2", Senate Fiscal Agency.

²⁴ Gordon, Tracy, "The Census Is About Nearly \$1 Trillion In Federal Spending, Not Just Elections", Tax Policy Center, June 27, 2019; Hotchkiss, Marisa, et al., "Uses of Census Bureau Data in Federal Funds Distribution: A New Design for the 21st Century", p. 10, Sept. 2017.

²⁵ Reamer, Andrew, "Brief 7: Comprehensive Accounting of Census-Guided Federal Spending (FY2017), Part A: Nationwide Analysis", "Counting for Dollars 2020: The Role of the Decennial Census in the Geographic Distribution of Federal Funds", George Washington Institute of Public Policy, Nov. 2019.

²⁶ Reamer, Andrew, "Michigan", "Counting for Dollars 2020: The Role of the Decennial Census in the Geographic Distribution of Federal Funds", George Washington Institute of Public Policy, Jan. 2019.

²⁷ Reamer, Andrew, "Brief 7: Comprehensive Accounting of Census-Guided Federal Spending (FY2017), Part B: State Estimates", "Counting for Dollars 2020: The Role of the Decennial Census in the Geographic Distribution of Federal Funds", George Washington Institute of Public Policy, Feb. 2020.

²⁸ Barry-Jester, Anna Maria, "A Million Children Didn't Show Up In The 2020 Census. How Many Will Be Missing In 2020?", *FiveThirtyEight*, 5-19-19.

²⁹ Farley, Reynolds, "The Importance of Census 2020 and the Challenges of Getting a Complete Count", *Harvard Data and Science Review*, 1-31-20.

³⁰ Wang, Hansi Lo, "2020 Census Could Lead To Worst Undercount Of Black, Latinx People In 30 Years", *NPR*, 6-4-19.

³¹ Totenberg, Nina, et al., "Trump Threatens Census Delay After Supreme Court Leaves Citizenship Questions Blocked", *NPR*, 6-27-19. The Census Bureau estimated that addition of the question likely would reduce census response rates among households with at least one noncitizen by at least 8.0% (9.0 million people). In June 2019, however, the US Supreme Court ruled that the question could not be included on the 2020 Census form. *Dept. of Commerce v. New York*, 588 US __ (2019). The District Court found that the "the decision to add a citizenship question to the 2020 Census—even if it did not violate the Constitution itself—was unlawful for a multiple of independent reasons and must be set aside". *New York v. Dept. of Commerce*, 351 FSupp 3d 502 (S.D.N.Y 2019). The Supreme Court affirmed in part and reversed in part, finding that although the Enumeration Clause allows Congress, and by extension the Secretary of Commerce, to include the citizenship question on the census, the Secretary of Commerce's decision to include the question was arbitrary and capricious, was based on a pretextual rationale, and violated the Census Act. The Supreme Court remanded the case to the District Court to allow the Department of Commerce to present a nonpretextual rationale for the question's inclusion before the printing deadline. On July 11, 2019, however, President Trump announced that he had instructed the Department of Justice not to pursue legal action on the citizenship questions.

³² Note 4.

³³ Gold, Amanda, et al., Rural Communities Aren't Immune from a Census Undercount. Here's How They Can Prepare for 2020, Urban Institute, 10-31-19.

³⁴ Beggin, Riley, "1.2 million Michiganders at risk of not being counted in 2020 Census", *Bridge Magazine*, 2-26-20.

³⁵ Pratt, Chastity, "Gretchen Whitmer on Census: Get counted or lose money, clout for Michigan", *Bridge Magazine*, 6-11-19.

³⁶ *Id.*; Welch, Sherri, "State doubles support for nonprofit census outreach with \$5 million appropriation", *Crain's Detroit Business*, 6-26-19.

³⁷ Miller, Maggie, "Alarm sounds over census cybersecurity concerns", *The Hill*, 7-17-19.

³⁸ Marks, Joseph, "The Cybersecurity 2020: The 2020 Census could be the next big hacking and disinformation target", *The Washington Post*, 2-13-20.

³⁹ "2020 Census: Initial Enumeration Underway but Readiness for Upcoming Operations is Mixed", Government Accountability Office, Feb. 2020.

⁴⁰ Wang, Hansi Lo, "Social Media Sites Under Pressure To Prep For Census Trolls And Interference", *NPR*, 11-5-19.

⁴¹ Schneider, Mike, "Census relying on social media, advocates to stop bad info", *Associated Press*, 1-30-20; Alba, Davey, "YouTube Says It Will Ban Misleading Election-Related Content", *The New York Times*, 2-3-20.

⁴² Bahrapour, Tara, "Trump administration asks Congress to push back census by months because of coronavirus", *The Washington Post*, 4-13-20; Wang, Hansi Lo, "Trump Officials Ask To Delay Census Data For Voting Districts, House Seats", *NPR*, 4-13-20.

⁴³ On March 23, 2020, Governor Whitmer issued EO 2020-21, which, subject to certain exceptions, required all Michigan residents to stay at home or at their place of residence, and banned all public and private gatherings of people not part of a single household. Executive Order 2020-21 was set to expire on April 31, 2020. On April 9, 2020, Governor Whitmer signed EO 2020-42, which rescinded EO 2020-21 and expanded and extended the stay-at-home order until April 30, 2020.