

An hourglass-shaped graphic with a globe in the top bulb and another globe in the bottom bulb. The hourglass is light blue and has a dark blue top and bottom. The globe in the top bulb is dark blue, and the globe in the bottom bulb is light blue. The hourglass is centered on the page.

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*House Apportionment: Could Census Corrections Shift a House Seat?*

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**Abstract.** This report uses the incomplete figures released to staff at the September briefings to assess the potential impact on states claims to Representatives if these figures were to be used to apportion seats in the House instead of the official apportionment figures released by the Census Bureau on December 28, 2000. Although no seats would shift among states based on these numbers, the already-narrow margin between North Carolina and Utah for the last (435th) seat in the House is narrowed by a factor of 10.

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# CRS Report for Congress

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## House Apportionment: Could Census Corrections Shift a House Seat?<sup>1</sup>

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### Summary

On September 30, 2003, the Census Bureau briefed selected congressional staff on changes that will be made to the 2000 census counts through the bureau's "Count Question Resolution Program," (CQR). This report uses the incomplete figures released to staff at the September briefings to assess the potential impact on states' claims to Representatives if these figures were to be used to apportion seats in the House instead of the official apportionment figures released by the Census Bureau on December 28, 2000. Although no seats would shift among states based on these numbers, the already-narrow margin between North Carolina and Utah for the last (435<sup>th</sup>) seat in the House is narrowed by a factor of 10. This report will be updated when the Census Bureau releases final numbers from the CQR program.

### Background

One of the fundamental issues before the framers at the Constitutional Convention in 1787 was how power was to be allocated in the Congress among the smaller and larger states. The solution ultimately adopted, known as the Great (or Connecticut) Compromise, resolved the controversy by creating a bicameral Congress with states represented equally in the Senate, but in proportion to population in the House. The Constitution provided the first apportionment of House seats: 65 Representatives were allocated to the states based on the framers' estimates of how seats might be apportioned after a census. House apportionments thereafter were to be based on Article 1, section 2, as modified by the Fourteenth Amendment:

*Amendment XIV, section 2.* Representatives shall be apportioned among the several States ... according to their respective numbers....

*Article 1, section 2.* The number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at least one Representative....

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<sup>1</sup> This report originally was authored by David Huckabee, who has retired from CRS.

The process of apportioning seats in the House is constrained both constitutionally and statutorily. The Constitution defines both the maximum and the minimum size of the House. There can be no fewer than one Representative per state, and no more than one for every 30,000 persons.<sup>2</sup>

The current apportionment formula was adopted in 1941. In addition to specifying the apportionment method, the 1941 Act sets the House size at 435 and mandates administrative procedures for apportionment. The President is required to transmit to Congress “a statement showing the whole number of persons in each state” and the resulting seat allocation within one week after the opening of the first regular session of Congress following the census.<sup>3</sup>

The Census Bureau has been assigned the responsibility of computing the apportionment. As matter of practice, the director of the bureau reports the results of the apportionment by December 31st of the census year. Once the results are received by Congress, the Clerk of the House is charged with the duty of sending to the governor of each state a “certificate of the number of Representatives to which such state is entitled” within 15 days of receiving notice from the President.<sup>4</sup>

There are no provisions for altering the apportionment because of errors that may later be found in census counts. The Census Bureau’s *Federal Register* program notice pertaining to the “Count Question Resolution Program,” states that while “corrections made to the population and housing unit counts by this program will result in the issuance of new official Census 2000 counts ... and may be used by governmental entities for future programs requiring official Census 2000 data,”<sup>5</sup> the “Census Bureau will not change the apportionment or redistricting counts to reflect corrections resulting from the CQR process.”<sup>6</sup>

## The CQR Program

The Count Question Resolution Program provides a mechanism for corrections to the official census counts. Three types of challenges to the census counts are considered by this program, which could result in: (1) correcting inaccurate boundaries of jurisdictions; (2) reassigning inaccurately geocoded living quarters and their associated

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<sup>2</sup> The actual language in Article 1, section 2, pertaining to this minimum size reads as follows: “The number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at least one Representative.” This clause is sometime misread to be a requirement that districts can be no larger than 30,000 persons. It should be read as a minimum-size population requirement, i.e. districts cannot have fewer than 30,000 persons.

<sup>3</sup> 55 Stat. 761 (1941) Sec. 22 (a). [Codified in 2 U.S.C. 2(a).] In other words, after the 2000 Census, this report was due in January 2001.

<sup>4</sup> *Ibid.*, Sec. 22 (b).

<sup>5</sup> U.S. Dept. of Commerce, Bureau of the Census, “The Census 2000 Count Question Resolution Program,” *Federal Register*, vol. 66, no. 77, July 6, 2001, p. 35589.

<sup>6</sup> *Ibid.*, p. 35593.

population to correct boundaries; and (3) adding or removing specific living quarters (and the persons residing in them) that were erroneously included in the counts.

The CQR process began on June 30, 2001, and jurisdictions had until September 30, 2003, to file challenges under the program. The Census Bureau released tables to Congress showing the current tally of changes to the official counts identified as of September 30, 2003, but not all challenges to census counts had yet been processed. The most significant changes affect North Carolina, whose 13<sup>th</sup> Representative was the last (435<sup>th</sup>) seat assigned in the official reapportionment of House seats following the 2000 census.

As of September 30, 2003, North Carolina would have its official 2000 census count reduced by 2,673 persons because, according to the *Raleigh News & Observer*, the Census Bureau “counted 2,696 students living in UNC-CH [University of North Carolina, Chapel Hill] dormitories — twice.”<sup>7</sup> Students in dormitories are supposed to be enumerated by the “group quarters” procedure where forms are sent to the institution instead of individuals in the group quarters. In the case of UNC-Chapel Hill, forms were sent to some students as well as to the university. The discrepancy between the 2,673 and 2,696 figures is accounted for by other CQR activities in North Carolina. As of this writing, the Census Bureau has not completed evaluating all challenges to the North Carolina figures, so these figures may change; but the number of persons North Carolina would need to lose for its 13<sup>th</sup> district to drop to the 436<sup>th</sup> position in the apportionment rankings would be reduced from 3,084 to 309 persons if these new numbers were used to reapportion the House (if Congress were to choose to do so).

On a nationwide basis, 7,183 persons are either added to, or subtracted from, state populations, resulting in a net change of 1,427 persons from the September 30, 2003, CQR program data. No seats would shift among states based on the revised apportionment populations derived by these figures (see **Table 1**).

**Table 1. Revisions of 2000 Census Apportionment Population Based on Census Bureau’s September 30, 2003, Count Question Resolution Program Numbers**

State	2000 Census apportionment population <sup>a</sup>	Count question resolution changes <sup>b</sup>	Revised apportionment population <sup>c</sup>	Seats
AL	4,461,130		4,461,130	7
AK	628,933	-1	628,932	1
AZ	5,140,683		5,140,683	8
AR	2,679,733		2,679,733	4
CA	33,930,798	5	33,930,803	53
CO	4,311,882	736	4,312,618	7
CT	3,409,535	19	3,409,554	5
DE	785,068		785,068	1
FL	16,028,890	442	16,029,332	25
GA	8,206,975	61	8,207,036	13
HI	1,216,642		1,216,642	2

<sup>7</sup> Rob Christensen, “Miller Vows to Stay in Seat Utah Covets,” *Raleigh News & Observer*, Oct. 2, 2003, [http://www.newsobserver.com/politics/miller/story/2915960p-2680128c.html], visited Oct. 6, 2003.

State	2000 Census apportionment population <sup>a</sup>	Count question resolution changes <sup>b</sup>	Revised apportionment population <sup>c</sup>	Seats
ID	1,297,274	3	1,297,277	2
IL	12,439,042	274	12,439,316	19
IN	6,090,782	21	6,090,803	9
IA	2,931,923	58	2,931,981	5
KS	2,693,824	396	2,694,220	4
KY	4,049,431	440	4,049,871	6
LA	4,480,271	-18	4,480,253	7
ME	1,277,731		1,277,731	2
MD	5,307,886		5,307,886	8
MA	6,355,568		6,355,568	10
MI	9,955,829	36	9,955,865	15
MN	4,925,670	13	4,925,683	8
MS	2,852,927	-2	2,852,925	4
MO	5,606,260	1472	5,607,732	9
MT	905,316		905,316	1
NE	1,715,369	2	1,715,371	3
NV	2,002,032		2,002,032	3
NH	1,238,415		1,238,415	2
NJ	8,424,354	-3	8,424,351	13
NM	1,823,821		1,823,821	3
NY	19,004,973	207	19,005,180	29
NC	8,067,673	-2673	8,065,000	13
ND	643,756		643,756	1
OH	11,374,540	3	11,374,543	18
OK	3,458,819	-2	3,458,817	5
OR	3,428,543	33	3,428,576	5
PA	12,300,670		12,300,670	19
RI	1,049,662		1,049,662	2
SC	4,025,061	-112	4,024,949	6
SD	756,874		756,874	1
TN	5,700,037	-16	5,700,021	9
TX	20,903,994	-30	20,903,964	32
UT	2,236,714	29	2,236,743	3
VT	609,890		609,890	1
VA	7,100,702	-21	7,100,681	11
WA	5,908,684	20	5,908,704	9
WV	1,813,077	6	1,813,083	3
WI	5,371,210	29	5,371,239	8
WY	495,304		495,304	1
	281,424,177	1,427	281,425,604	435

<sup>a</sup>U.S. Dept. of Commerce, Bureau of the Census, *Census 2000 Shows Resident Population of 281,421,906; Apportionment Counts Delivered to President*, Press Release CB00-CN.64 (Washington: Dec. 28, 2000), table 1. (Please note that the apportionment population includes the foreign-based military and other federal employees living overseas.)

<sup>b</sup>U.S. Dept. of Commerce, Bureau of the Census, *Populations of States Including Count Question Resolution (CQR) Corrections Through September 30, 2003*, table provided at a briefing to congressional staff on Sept. 30, 2003.

<sup>c</sup>Figures calculated by CRS.

As noted above, the already narrow margin between the claims of North Carolina and Utah for the 435<sup>th</sup> seat in the House would become even narrower if the CQR program numbers were to be substituted for the official apportionment numbers. Utah's margin to gain a seat drops from 855 to 87 persons (see **Table 2**). The margin between

the 435<sup>th</sup> and 436<sup>th</sup> seat was similarly close in the reapportionment following the 1970 Census. If Oklahoma had had 283 fewer persons, or Oregon had had 229 more persons, Oklahoma would have lost a seat to Oregon. Unlike the present case, the margin would have *increased* if corrected totals had been used for these states to 1,314 persons for Oklahoma and 1,071 more persons for Oregon.

**Table 2. Population Needed to Gain or Lose a Seat Using Census Bureau September 30, 2003, Count Question Resolution Program Numbers to Adjust the 2000 Census Apportionment Population**

Rank	State	Seat	Revised apportionment population	Priority value <sup>a</sup>	Pop. needed to gain or lose seat	
					Using revised population <sup>b</sup>	Using official apportionment population <sup>c</sup>
420	CA	51	33,930,803	671,930.02	-1,324,952	-1,325,368
421	TN	9	5,700,021	671,753.92	-221,143	-221,227
422	MA	10	6,355,568	669,935.69	-229,996	-230,072
423	NY	29	19,005,180	666,951.07	-605,789	-605,818
424	CO	7	4,312,618	665,451.40	-128,056	-127,372
425	PA	19	12,300,670	665,144.06	-359,731	-359,885
426	TX	32	20,903,964	663,701.52	-567,227	-567,519
427	MO	9	5,607,732	660,877.55	-128,854	-127,450
428	CA	52	33,930,803	658,881.60	-679,229	-679,651
429	MN	8	4,925,683	658,222.08	-93,767	-93,814
430	GA	13	8,207,036	657,088.76	-142,345	-142,386
431	IA	5	2,931,981	655,610.88	-44,359	-44,337
432	FL	25	16,029,332	654,394.74	-213,172	-212,933
433	OH	18	11,374,543	650,239.34	-79,546	-79,688
434	CA	53	33,930,803	646,330.32	-33,507	-33,940
435	NC	13	8,065,000	645,716.78	-309	-3,084
<i>Last seat assigned by law</i>						
436	UT	4	2,236,743	645,692.09	87	855
437	NY	30	19,005,180	644,335.95	40,730	47,245
438	TX	33	20,903,964	643,275.02	79,349	86,268
439	MI	16	9,955,865	642,648.32	47,537	50,891
440	IN	10	6,090,803	642,027.01	35,005	37,057
441	MT	2	905,316	640,155.08	7,866	8,168
442	IL	20	12,439,316	638,123.45	148,022	152,465
443	MS	5	2,852,925	637,933.42	34,809	35,763
444	CA	54	33,930,803	634,248.32	613,537	624,984
445	WI	9	5,371,239	633,006.59	107,851	109,696
446	OK	6	3,458,817	631,490.70	77,920	79,090
447	PA	20	12,300,670	631,011.06	286,668	290,837
448	FL	26	16,029,332	628,722.13	433,281	439,176
449	OR	6	3,428,576	625,969.47	108,161	109,365
450	MD	9	5,307,886	625,540.36	171,204	173,020

<sup>a</sup> Each state's claim to representation in the House is based on a "priority value" determined by the following formula:  $PV = P / [n(n - 1)]^{1/2}$ ; where PV = the state's priority value, P = the state's population, and n = the state's n<sup>th</sup> seat in the House. For example, the priority value of North Carolina's 13<sup>th</sup> seat is:

$$\begin{aligned}
 PV_{NC13} &= 8,065,000 / [13(13 - 1)]^{1/2} \\
 &= 8,065,000 / [156]^{1/2} \\
 &= 8,065,000 / 12.489959967968 \\
 &= 645,716.780219014
 \end{aligned}$$

The actual seat assignments are made by ranking all of the states' priority values from highest to lowest until 435 seats are allocated.

<sup>b</sup> These figures represent the population a state would need either to lose in order to drop below the 435<sup>th</sup> seat cutoff, or to gain to rise above the cutoff. If, for example, North Carolina had 309 fewer persons in its population total, the state's priority value would decrease to 645,691.04, which would result in a new sequence number of 436 because

Utah's 4<sup>th</sup> seat would occupy the 435<sup>th</sup> position in the priority list. Similarly, if Utah had 87 more persons in its population total, it would displace North Carolina, because Utah's priority value would become 645.716.91.

<sup>c</sup> These figures show how many more or fewer persons would have been necessary for states to gain or lose a seat based on the official apportionment figures sent to the President and released on December 28, 2000.

Source: Computations of priority values and persons needed for states to gain or lose a seat by CRS. See CRS Report RL30711, *The House Apportionment Formula in Theory and Practice*, by David C. Huckabee, for an explanation of formula for allocating House seats.

## Could the CQR Changes Shift a House Seat?

As noted previously, the preliminary CQR corrections released on September 30, 2003, would not alter the apportionment of House seats when compared to the official results, and the Census Bureau does not plan to alter the official apportionment figures. If further corrections would change the apportionment, there are 19<sup>th</sup>-century precedents for the Congress to change apportionments after the initial results have been released.

In 1852, Congress increased California's delegation by one Representative because it appear[ed] "that the returns of the population of California are incomplete."<sup>8</sup> Section 2 of the act provided that if "at any future decennial enumeration of the inhabitants of the United States, the census of any district or subdivision in the United States shall have been improperly taken, or if the returns of any district or subdivision shall be accidentally lost or destroyed, the Secretary of the Interior shall have power to order a new enumeration of such district or subdivision."<sup>9</sup>

Additional Representatives were added to the totals initially provided by the reapportionment acts following the 1860 and 1870 censuses. Eight states received one additional seat by a supplemental apportionment act approved in March 1862.<sup>10</sup> Another supplemental apportionment act enacted in May 1872, assigned one additional Representative each to nine states.<sup>11</sup>

When Congress accepted challenges to census results, the 19<sup>th</sup>-century precedent was to increase the size of the House, not to take seats from states. There are no examples similar to the 19<sup>th</sup>-century precedents noted above in the 20<sup>th</sup> century, but the last time new states were admitted between censuses, the House size was temporarily increased to 437 until the next reapportionment, when it became 435 again.<sup>12</sup>

If further refinement of the 2000 Census data reveals that the apportionment would be changed if the corrected numbers were to be used instead of those used in December 2000, Congress could alter the apportionment by legislation.

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<sup>8</sup> 10 Stat. 25.

<sup>9</sup> Ibid.

<sup>10</sup> 12 Stat. 353.

<sup>11</sup> 17 Stat. 192.

<sup>12</sup> By authority of section 9 of P.L. 85-508 (72 Stat. 345) and section 8 of P.L. 86-3 (73 Stat. 8), which admitted Alaska and Hawaii to statehood, the House size was temporarily increased to 437 until the reapportionment following the 1960 census, when it returned to 435.