

The Census and Redistricting

The Census is a count of every resident in the U.S. and is required by Article I, Section 2, Clause 3 of the U.S. Constitution which states that “Representatives and direct Taxes shall be apportioned among the several States...according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons...within every subsequent Term of ten Years, in such Manner as they shall by Law direct.”

The first Census took place in 1790 and has taken place every decade since to figure out the exact population of the United States and allocate how many Congressional Representatives are attributed to each state based on its total population. In addition to Congressional seats, the Census is used to define legislative districts, school district assignment areas, and other important functional areas of government such as how federal funds and Electoral College votes are allocated.

The Census is administered by the U.S. Census Bureau, and involves asking each person simple questions such as name, gender, race, ethnicity, and whether they sometimes live somewhere else. For the 2010 Census, all information is based upon where the person was living on “Census Day,” which is April 1, 2010. Due to the labor intensive process of assembling all the Census data, the Census Bureau will not release the results of the 2010 Census until early 2011.

Then, depending on the degree of change that occurred in a geographical area over the last ten years, Congressional seats are allocated as well as the necessity for redistricting in certain cities and states. Redistricting is the process of changing political borders such as electoral districts and constituency boundaries based upon the Census results. Cities that elect their council members on a district-by-district basis typically engage in redistricting. While each city and state can have its own standards for how political borders are drawn, the redistricting process must address four basic legal principles:

1. One Person-One Vote under the U.S. Constitution (equal population);
2. Compliance with Section 5 of the U.S. Voting Rights Act (requiring preclearance and applying a retrogression standard to minority group populations in specific districts);
3. Non-discrimination standard of Section 2 of the U.S. Voting Rights Act; and
4. *Shaw v. Reno* line of cases (limitations on the use of race as a factor in redistricting).

For many governmental entities, failure to take the above stated legal principles into consideration when drawing up districts has resulted in costly litigation. To avoid the many pitfalls of the redistricting process that are sure to arise when governmental entities begin to redistrict in early 2011, many will secure the services of an attorney with experience in the redistricting process.