

# LOS ANGELES CITY COUNCIL REDISTRICTING COMMISSION

To: Mapping and Data Committee  
From: Frank Cardenas  
Date: May 24, 2021  
Re: Use of Census Redistricting Data in Legacy Format

This memorandum provides an update on the announced releases of redistricting data in August and September and an analysis of such data and its recommended use by the Commission.

## Background

While the U.S. Constitution requires congressional apportionment to be based on an “enumeration” of the U.S. population,<sup>1</sup> neither federal law nor the California Constitution require the use of a particular data set or source for the purpose of redistricting.<sup>2</sup> The Los Angeles City Charter requires redistricting to be based on total population data produced by the U.S. Census Bureau (the “Bureau”) but otherwise does not specify a specific data source.<sup>3</sup>

Whether it is or is not legally required by any particular jurisdiction as the basis for redistricting, the decennial census data, specifically the more detailed population dataset known as redistricting counts, or the Census P.L. 94-171<sup>5</sup> data (“Redistricting Data”), has become critical for redistricting state legislative and local governmental political districts because it provides geographic and spatial detail on where people live and their key demographic characteristics.

## Discussion

The seeds of the delay in the release of the Redistricting Data were sown in 2020, largely due to the outbreak of Covid-19, as the pandemic affected the Bureau’s enumeration efforts.<sup>6</sup> Speculation that the Bureau would not be able to meet its statutory deadline under

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<sup>1</sup> United States Constitution, Article I, Section 2.

<sup>2</sup> California is one of 17 states whose constitutions do not explicitly identify a data source for legislative and/or congressional redistricting. National Conference of State Legislatures, *Redistricting and Use of Census Data*, April 1, 2021. <https://www.ncsl.org/research/redistricting/redistricting-and-use-of-census-data.aspx>.

<sup>3</sup> “Districts so formed shall each contain, as nearly as practicable, equal portions of the total population of the City as shown by the Federal Census immediately preceding the formation of districts.” City Charter, Sec. 204(a). The State Elections Code similarly requires that population equality shall be based on total population of the city and further states that total population is to be determined “by the most recent federal decennial census for which the redistricting data described in Public Law 94-171 are available.” (State Elections Code Section 21621(a))

<sup>5</sup> Public Law (P.L.) 94-171, enacted by Congress in December 1975, requires the Census Bureau to provide states the opportunity to identify the small area geography for which they need data in order to conduct legislative redistricting.

<sup>6</sup> Pursuant to 13 U.S.C. § 141(b) and (c), the Census Bureau is required to deliver apportionment counts within nine

federal law to deliver the Redistricting Data to states by March 31, 2021<sup>7</sup> were verified on February 12 when the Bureau announced that it would release the Redistricting Data by Sept. 30, six months after the statutory deadline.<sup>8</sup> Not surprisingly, This announcement created immediate alarm on the part of legislatures, redistricting bodies and stakeholders across the country, particularly jurisdictions that have to complete their redistricting process this year.<sup>9</sup> The states of Ohio and Alabama promptly sued the statistical agency, saying the delay would undermine their ability to redraw districts.<sup>10</sup>

On March 12, the U.S. Dept. of Justice ("DOJ") filed a response on behalf of the Bureau in the State of Ohio's federal lawsuit seeking to compel the Bureau to release census data by the statutory deadline.<sup>11</sup> In a declaration attached to the DOJ response, James Whitehorne, Chief of the Redistricting and Voting Rights Data Office of the Bureau, attested that the Bureau could have data that could be released to all states by mid-to-late August: "in an older format of data the Census Bureau developed decades ago"<sup>12</sup> Three days later, the Bureau announced that it would now release a so-called "legacy format" summary redistricting data file in "mid to late August."<sup>13</sup>

In his declaration filed in the Ohio lawsuit, Mr. Whitehorne described the legacy<sup>14</sup> format data as "a difficult-to-use series of files that are used in databases capable of creating relationships between tables and files" and outlined the following steps for its proper use:<sup>15</sup>

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months of Census Day and the P.L. 94-171 redistricting files within 12 months—for the 2020 Census, by December 31, 2020, and March 31, 2021, respectively. Due to the novel coronavirus pandemic, the Census Bureau suspended 2020 Census field operations in March 2020 and the administration requested that Congress extend the deadlines by four months, continuing nonresponse follow-up operations through October 31, 2020, and changing the deadline for apportionment totals to April 30, 2021, and redistricting files to July 31, 2021. However, action was not taken in both houses of Congress on this request and, on August 3, 2020, the director of the Census Bureau announced the Census Bureau's intent to end field operations by September 30 and meet the legislatively mandated deadlines. A federal district court enjoined the September 30 end of data collection and the December 31 delivery of apportionment population counts. Ultimately, on appeal, a U.S. Supreme Court order cleared the way for the Census Bureau to end data collection for the 2020 Census on October 15.

<sup>7</sup> 13 USC 141(c).

<sup>8</sup> See *Census Bureau Statement on Redistricting Data Timeline*, Release Number CB21-CN.14, 2/12/21.

<sup>9</sup> Based on the National Conference of State Legislature's webpage titled *2020 Census Delays and the Impact on Redistricting*, at least 27 states, including California, have a requirement for redistricting to be completed in 2021 (either explicitly or implicitly).

<sup>10</sup> Ohio's lawsuit was dismissed by the federal court on March 24, and the state is appealing the ruling. *Ohio v. Raimondo*, Case: 3:21-cv-00064-TMR, 02/25/21.

<sup>11</sup> Defendant's Opposition to Plaintiff's Motion for Preliminary Injunction and Writ of Mandamus, Case: 3:21-cv- 00064-TMR, 3/12/21, ECF No. 11.

<sup>12</sup> *Id.*, Case: 3:21-cv- 00064-TMR, 3/12/21, Decl. of James Whitehorne, ECF No. 11, Doc.11-2 at sec. 25.

<sup>13</sup> U.S. Census Bureau, *U.S. Census Bureau Releases Statement on Release of Legacy Format Summary Redistricting Data File*, Rel. No. CB21-RTQ.09 (Mar. 15, 2021), at <https://www.census.gov/newsroom/press-releases/2021/statement-legacy-format-redistricting.html>.

<sup>14</sup> *Merriam-Webster's Dictionary* (11<sup>th</sup> ed) provides the following definitions for the use of *legacy* as an adjective: "of, relating to, or being a previous or outdated computer system. (e.g., transfer the legacy data; a legacy system)"; and "of, relating to, associated with, or carried over from an earlier time, technology, business, etc."

<sup>15</sup> Defendant's Opposition to Plaintiffs Motion for Preliminary Injunction and Writ of Mandamus, Case: 3:21-cv-00064-TMR, 3/12/21, ECF No. 11 and Whitehorne Decl.. 125.

1. The files must be imported into a database;
2. Relationships must be established between the files; and
3. The State must pull a subset of records in those files and fields for only the geography and data categories the State wants to use.

In both the declaration and the subsequent statement from the Bureau, the difficulty in using data in this format was noted and "any State using this data would have to accept responsibility for how they process these files, whether correctly or incorrectly." It was also reiterated that the user-friendly, tabulated redistricting data is still on track for release on September 30 on DVDs and flash drives with a software tool that makes it easy for browsing through the data.

On April 1st, James Whitehome distributed a letter<sup>16</sup> acknowledging the difficulties the September 30 release date could have on the states and affirming the release of the legacy format data in August. This letter provided additional clarity and assurances as follows:

"We also recognize that delivery in September may cause hardship for states with earlier deadlines. Accordingly, we continued to evaluate our planned data processing, looking for ways to provide data for states that need redistricting data earlier. Throughout this reevaluation, we announced on March 15, 2021, that we will provide the states with our legacy format summary files in mid-to-late August, currently scheduling for the third week of August. While we had intended to provide the legacy format summary files with the final 2020 Census redistricting data, we determined that many states will be able to use these legacy files in August without waiting for the September delivery. The legacy format files will have identical data to the files that we will deliver in September. They will have been fully reviewed and subject to the same exacting quality assurance processes. The only drawback to using the legacy format summary files is that they will require additional handling and software to make the data easily accessible. We expect that many states will elect to use the August delivery because they have used similar products in the past." (Emphasis added).

This statement by Mr. Whitehome that the August and September data releases will be comprised of identical data, in different formats, was repeated in the Ohio court last month.<sup>17</sup>

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<sup>16</sup> Letter from Mr. James Whitehome to the Official Recipients of the 2020 Census P.L. 94-171 Redistricting Data, page 1.

<sup>17</sup> "In recognition of the difficulties the above timeline creates for states with redistricting and election deadlines prior to September 30, the Census Bureau continuously reviews its timeline to identify any opportunities to shorten the processing schedule. Our review confirms that all steps of data processing and formatting will be complete by September 30. However, we recently announced on March 15, 2021, that we expect to be able to provide states with a "legacy" format summary redistricting data file in mid-to-late August. The legacy format summary files will not contain the individual data tables that will be included in the September release, but states can use an outside vendor to process the data if they do not have the capacity to extract individual data tables from the legacy format data on their own. While we had intended to provide the legacy format summary files with the final 2020 Census redistricting data, we determined that states should be given the opportunity to use the legacy format files as soon as they become available in August. The legacy format files will have identical data to the files that we expect to

It is thus clear that the same, official Redistricting Data will be released in two different formats, at distinct times. But the underlying data, Redistricting Data, in each release will be identical. It may be helpful to distinguish the dual release thusly: the “Legacy-Format Redistricting Data” (to be released in August) and the “New-format Redistricting Data” (to be released in September).

Additional verification concerning the reliability of the Legacy-Format Redistricting Data has been provided to this Commission by Ms. Karin Mac Donald, the Director of the Statewide Database:<sup>18</sup>

“The census bureau has by now publicly confirmed what they had told me previously, which is that the "legacy data" are the PL94-171 data that will be released in September, and that these data are simply formatted differently. In other words, there is no difference in the actual data. The SWDB [Statewide Database] will be processing these data to make them available in an easier to use format. The data will be available within 7 days after they are released by the census bureau.”<sup>19</sup>

While the California Citizens Redistricting Commission has not formally adopted the Legacy-Format Redistricting Data for the purposes of beginning to draw maps, its Governmental Affairs/ Census Action Subcommittee, consisting of Commissioners Sara Sadhwani & Pedro Toledo has recommended that it do so.

“The Statewide Database, charged with delivery of the data to be used for redistricting purposes has consistently maintained that the legacy data being released by the Census Bureau is the same data as the P.L. 94-171 data that will be released at the end of September, simply in a different format. This data is being released so that states can engage in their redistricting process. While the underlying data is identical, to eliminate any risk, the legacy data will undergo a reconciliation process with the PL 94-171 redistricting data set for release by the Census Bureau by September 30, 2021. While some states may not have the data management infrastructure to utilize the legacy data, that is not the case for California.”<sup>20</sup>

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deliver in September. They will have been fully reviewed and subject to the same exacting quality assurance processes. The only drawback to using the legacy format summary files is that they will require additional handling and software to make the data accessible. We expect that many states will elect to use the August delivery because they have used similar products in the past and the vendors who support the states in redistricting are also knowledgeable and able to work with these files.” Declaration of James Whitehorne, Defendant's Opposition to Plaintiffs Motion for Preliminary Injunction and Writ of Mandamus, Case: 3:21-cv-00064-TMR (04/13/2021) ECF No. 41.

<sup>18</sup> The Statewide Database, located at U.C Berkeley, is the official redistricting database of the State of California.

<sup>19</sup> Karin Mac Donald, email to LACCRC Executive Director Frank Cardenas, May 10, 2021.

<sup>20</sup> Memo to Citizens Redistricting Commission from Commissioners Sara Sadhwani and Pedro Toledo, “*Re: Potential Courses of Action regarding delayed Census Data*,” April 24, 2021.

## Analysis

Redistricting is always a complex and complicated challenge. Even without the five to six-month delay in the release of Redistricting Data, the schedule to complete the process appeared tight. The unprecedented delay in the release of Redistricting Data places a significant time constraint on the Commission's ability to submit a Final Plan and Maps to the Council in time for the ordinance deadline of December 31 to be met. This is particularly so if the drawing of maps were to not begin until after the September 30 release New-Format Redistricting Data.

If the commencement of map design is to be deferred until the processing, in October, of New-Format Redistricting Data, this should not be a decision predicated on a perceived inadequacy or inaccuracy of the Legacy-Format Redistricting Data. As the Bureau has repeatedly made clear, the Legacy-Format Redistricting Data and the New-Format Redistricting Data are the same data. The gift is the same; the gift-wrapping is different.

## Conclusion

After reviewing various statements by the Bureau, in diverse venues, portions of the California Citizens Redistricting Commission's deliberations on the matter, communicating with the Statewide Database's director and speaking with David Ely, the City's expert demographer, it is my recommendation that the Mapping & Data Committee recommend to the Commission the use of Legacy-Format Redistricting Data, for the commencement of draft map design, as soon as the Statewide Database<sup>21</sup> and Mr. Ely have completed their respective processing of it.

It is further recommended that the Commission utilize additional data sources previously used by prior City redistricting commissions to augment Redistricting Data, such as the American Community Survey.

## Statement of Alignment with the Commission's Core Values

The recommended approach is consistent with the Commission's Core Values of Transparency, Data-Driven, and Solution-Oriented.

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<sup>21</sup> The Statewide Database can perform the necessary data processing and will also conduct a reconciliation process when the New-Format Redistricting Data is released by the end of September.