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## A looming civil-rights fight could shift political power away from Philly and North Jersey

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A voting-rights fight brewing right now could shape state and national politics for years to come.

Depending on which side wins, urban areas with diverse populations and high concentrations of immigrants in Pennsylvania and New Jersey could lose representation and political clout to the benefit of more rural, whiter, and GOP-friendly districts.

Philly would likely lose one or even two state House seats; the surrounding suburbs would lose another.

It's all about who gets counted when drawing political maps: Should all people have equal representation, or should all eligible voters have equal opportunity to elect that representation?

The two are not the same. Some areas have more children; some have more non-citizen immigrants. They still get represented by lawmakers, but they don't have a vote in choosing them.

President Donald Trump acknowledged the importance of the issue last month when he dropped his pursuit of a citizenship question on the 2020 Census but ordered federal agencies to collect the data.

Instead of counting all residents, Trump said in his July 11 executive order, "it may be open to States to design State and local legislative districts based on the population of voter-eligible citizens."

A small-but-growing group on the political right — including U.S. Rep. Scott Perry (R., Pa.) last month — has argued that political maps should be drawn to maintain equal numbers of eligible voters.

If someone can't vote, they argued, they shouldn't be counted when drawing maps. No vote, no person.

"You will game the system to decide that only certain people are worthy of participating or being represented," said Michael Li, a redistricting expert at the Brennan Center for Justice at New York University. "And that's a dangerous path to go down."

According to an Inquirer analysis of Census Bureau data, if political maps were drawn based on adult citizens:

- Southeastern Pennsylvania and North Jersey, with large immigrant communities, would have less representation.
- Southwestern Pennsylvania would benefit, as would Burlington County and other portions of South Jersey.
- The shift would tend to benefit areas in Pennsylvania that voted for Trump in 2016.
- Philadelphia would lose one, and possibly two state House seats.

The battle will almost certainly intensify into the 2021 redistricting round following next year's census. The U.S. Supreme Court left open the possibility in a 2016 case, and several experts said they believe at least a few state legislatures will attempt to redraw maps based on the number of voting-age citizens.

"Some of them undoubtedly are going to," said Ilya Shapiro, director of the Robert A. Levy Center for Constitutional Studies at the Cato Institute.

#### How maps have been drawn

For decades now, with little question or disagreement, maps have been drawn based on all residents.

The concept has its roots in the earliest debates about how electoral power should be distributed, and in 1868 the Fourteenth Amendment was adopted, declaring, in part, that "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."

The number of seats in the U.S. House are divided among states every 10 years following the census based on the total population in each state. States use the same data to draw congressional districts and state legislative maps.

Those districts are all drawn to be equal in population, following a series of cases in the 1960s in which the U.S. Supreme Court held that equal population protects equal representation.

"If you pay taxes, if you contribute into the government, and if you're expected to live by the government's laws, then you should be represented, because you have a stake in how that government is set up," said Justin Levitt, an election law expert at Loyola Law School in Los Angeles and a former Justice Department official. "That's the basic theory behind the mandate in the Constitution that literally everybody be counted."

#### The argument for change

Critics argue the current system disenfranchises voters. If two districts have the same number of residents but different numbers of eligible voters, "the use of total-population counts in districts with concentrations of non-citizen residents grants voters in those districts disproportionate power," Shapiro wrote in a Cato Institute legal brief in the 2016 *Evenwel v. Abbott* case.

The institute and others hold that maps should be drawn based on the "citizen voting-age population," equalizing the number of adult citizens in legislative districts.

CVAP "is a better metric because the question is who is part of the polity," Shapiro said. Children, for example, are represented by their parents.

“And so it seems right in that respect, if you’re following ‘one person, one vote,’ to equalize voters rather than people,” he said.

In *Evenwel*, the Supreme Court unanimously upheld the use of total population to draw state legislative maps — but explicitly left open the question of whether states could use some other measure.

“[W]e need not and do not resolve whether . . . states may draw districts to equalize voter-eligible population rather than total population,” Justice Ruth Bader Ginsburg wrote.

How counting only adult citizens would affect Pennsylvania and New Jersey

Drawing political maps based on adult citizens would shift political power from Southeastern Pennsylvania to Southwestern Pennsylvania. Similarly, clout would flow from North Jersey counties outside New York City to parts of South Jersey, especially Burlington County and the northern Shore counties.

In Pennsylvania, that would hurt denser, Democratic areas that have attracted immigrants.

The difference would be most visible when drawing Pennsylvania’s 203 state House districts: Philly would lose one and perhaps two seats in Harrisburg if the map were drawn based on adult citizens instead of residents, according to an analysis of Census Bureau survey data collected from 2013 to 2017, the most recent estimates available.

The collar counties — Bucks, Chester, Delaware, and Montgomery — would also lose a seat.

And some lawmakers would be left representing more constituents than others, creating unequal ability to provide constituent services.

“It’s not like the people who aren’t being counted go away,” Li said. “It’s not like you’re rapturing them, these people don’t go away. These people still exist and they still have needs.”

Will it happen here?

Perry, the Republican who represents the Harrisburg-area district, was one of 19 members of Congress who wrote a letter to the U.S. attorney general three weeks ago encouraging the Trump administration to include a citizenship question on the 2020 Census. The letter’s authors cited the need for citizenship data to draw political maps and to allocate congressional seats.

It’s too soon to know whether state lawmakers in Pennsylvania or New Jersey will agree and attempt to change how the maps are drawn, though experts said Pennsylvania is the more likely state to do so, given Republican control of the legislature and a history of gerrymandering.

Pennsylvania Senate Republicans haven’t yet looked into the issue, but the chair of the State Government Committee is open to exploring it, said spokesperson Jennifer Kocher.

As for New Jersey, the Senate Republicans wouldn’t touch the subject. A spokesperson would only say that the state’s political maps are drawn by bipartisan commission.