**Disparate Effects of Covid-19 on House Apportionment\***

**Introduction.** After the 2020 Census apportionment data was released, politically attentive citizens learned that had only 89 more New Yorkers filled out a census form, the state would not have lost a seat in the U.S. House of Representatives. AsDenise Lu pointed out, 89 people is about the number of people in a NYC subway car at (pre-pandemic) rush hour.[[1]](#footnote-2) However, as Lu also points out -- with lots of historical details -- the way the apportionment is calculated nearly guarantees there will always be some states that come very close to nearly earning an additional seat, or losing one.[[2]](#footnote-3) As political scientists John Ferejohn and Mo Fiorina remarked many decades ago, closeness counts only in horseshoes and dancing (Ferejohn and Fironia 1975).

The revelation that New York was shorted a seat by just 89 people came on the heels of claims about how COVID restrictions seemed to exacerbate the migration out of New York into sunbelt areas that had been happening throughout the decade.[[3]](#footnote-4) The census’s own estimates suggested that New York lost over a million residents to other states over the course of the decade.[[4]](#footnote-5) This out-migration led to expectations that New York would lose two seats after the 2020 apportionment. But, when the Census Bureau held a press conference to report the new apportionment total, what was actually announced was that New York’s population increased by 800,000 (4.5%).[[5]](#footnote-6) Of course, what counts for census-based apportionment is not population gain or loss, but relative population gain or loss vis-à-vis other states.

While there are a host of factors that plausibly affected New York’s congressional allotment in the 2020 census -- many of which we briefly review later in this essay, we first show that there is an indubitable villain that both Democrats and Republicans can agree to blame; namely COVID-19. This villain alone was enough to cost New York its 27th seat and 3.5% of its political clout. But it is only New York (on the losing side) and Minnesota (on the winning side) whose House delegation size was directly affected by the pandemic.

**COVID-19:** When we assert that COVID-19 may have cost New York a congressional seat, we are not talking about the pandemic’s effects on census administration and response rate, though such effects almost certainly existed. Rather, we are referring to deaths caused by COVID. Of course, it is not mere population loss that mattered rather, as noted earlier, changes in apportionment are about changes in the *relative* populations of the states. Because pandemic effects were not distributed across states in direct proportion to population, states which were hardest hit by the pandemic may have experienced an apportionment loss. Because New York was the epicenter of the pandemic when the census counts were taking place, if there were to be such an effect, we anticipated finding it in New York.[[6]](#footnote-7)

We downloaded the data on the cumulative number of deaths attributed to COVID-19 prior to Census Day (April 1, 2020) for each state from the CDC website.[[7]](#footnote-8) After adding these deaths to the population totals for each state (creating a counterfactual world in which COVID-19 did not cause any excess deaths), we reran the census apportionment using the same apportionment method mandated by Congress.[[8]](#footnote-9) While this is not a perfect measure of the effects of COVID on apportionment, since some deaths by COVID might nonetheless have occurred for other reasons, it gives us a very good baseline. What we find is that Minnesota, which had previously held onto its eighth district by just 23 votes, now has one of its seats instead apportioned to New York. But differential rates of COVID deaths was certainly not the only factor affecting apportionment.

**Low Census Response Rates:** Hispanics, particularly those who are non-citizens, are thought to be reluctant to fill out a census form. Most Hispanics in the United States are citizens and should have no reason to be fearful about the collection of their personal information by the federal government; undocumented immigrants, however, face a particular kind of threat that is distinct. President Trump repeatedly disparaged Hispanics, especially those seeking to cross the U.S.- Mexico border.[[9]](#footnote-10) Some non-citizens were fearful that the Trump administration would link census responses to individual persons, and use that data to deport those who are here illegally.[[10]](#footnote-11) Because the Trump administration attempted to add a citizenship question to the 2020 Census, that exacerbate the fear that Homeland Security might use national security concerns to trump the legally protected secrecy of the census and allow targeting of non-citizens by ICE for purposes of deportation.[[11]](#footnote-12) While we do have the data to estimate the extent to which these behaviors discouraged non-citizens living in the U.S. from filling out a census form, there can be little doubt that the effects were real.

New York has the ninth highest proportion of Hispanics in the country; it also has the third highest proportion of undocumented immigrants. Threats against Hispanics likely dissuaded some non-citizen Hispanics from responding to the census. It is certainly plausible that 89 undocumented immigrants chose not to answer the door for a census enumerator.

**Limited Census Outreach:** Governor Cuomo has been blamed for inadequate census outreach in New York, especially to minority communities.[[12]](#footnote-13) One can always argue that more could have been done by way of census outreach (especially when the state was only 89 people short) but, according to data provided by the National Conference of State Legislatures, New York state spent 20 million dollars on outreach.[[13]](#footnote-14) With a per capita spending of nearly 1 dollar per resident this put New York in the top ten for state outreach efforts. But Mayor Bill DeBlasio’s investment of $40 million in outreach to immigrant communities in New York City also mattered. These expenditures might have helped create the higher-than-expected population count.[[14]](#footnote-15) Comprehensive data on all outreach program spending by cities and localities is not available, but the 40 million dollars spent by NYC is almost certainly among the highest, even in per capita terms. Adding that spending to the statewide outreach places New York as third among all states per capita, after California and New Mexico. But even more importantly, when we compare New York’s one seat loss in 2020 under the actual census apportionment to the two-seat loss that was expected based on the Census Bureau’s own prior estimates based on administrative records, New York’s efforts to get its citizens to fill out the census does not look that bad.[[15]](#footnote-16)

The assessment of the importance of outreach is reinforced by what happened in other states. Politicians in Texas, Florida, and Arizona were disappointed to learn that their states would be receiving one fewer seat each than many had anticipated. But, unlike New York, those states (all under Republican control) were states where efforts to motivate census compliance were either lacking or late. Florida and Arizona spent no money, and Texas did eventually invest 15 million dollars, but not until September, long after enumerators began conducting their business.[[16]](#footnote-17) These states are also among those with large Hispanic populations, perhaps compounding the negative impact of limited outreach on headcounts. If Hispanics were especially likely to get undercounted, and census outreach mitigates the effect, New York seemed to have the correct approach. Rather presciently, the Commissioner of the New York City Mayor's Office of Immigrant Affairs Bitta Mostofi said "This pandemic has illustrated just how crucial a complete count is for our immigrant communities' health and futures.”[[17]](#footnote-18)

**The Census Bureau:** The census has historically undercounted minorities, as its own post-census analyses the past decades have acknowledged. We expect that the 2020 post-census analysis will find the same thing.[[18]](#footnote-19) Given the unprecedented politicization of the census, was there a higher level of incompetence this time around? We know that President Trump delayed a long time appointing a Census Director[[19]](#footnote-20); we also know that adequately funding the census was a very low priority for him[[20]](#footnote-21); and we know that he wanted to use the census to develop a database on non-citizens that could be used to permit the realization of the late Thomas Hofeller’s vision of having apportionment (and redistricting) based on citizen voting age population[[21]](#footnote-22) -- a goal which the Supreme Court (partially) stopped him from achieving.[[22]](#footnote-23) But once you go below the political appointees who might have political agendas of their own, the staff of the Census Bureau (some of whom we know personally) are people committed to doing the best job possible. And what we can say for sure is that, surprisingly, the number of people counted in the 2020 Census nationally exceeded the number projected in the pre-census estimates. While the reliability of those pre-census estimates is not yet clear, this is at least preliminary evidence that, overall, the Census was not as badly flawed as many feared.

Still, there were features of the 2020 Census that were distinctive that could affect an undercount and affect some states more than others. In particular, the 2020 Census is the first that was conducted primarily online. The nature of the digital divide is such that the reliance on initial on-line distribution of census could well have led to an undercount among the poor and less well-educated. We do not yet know enough about where the undercount was greatest to be sure about the magnitude of the effect of switching to on-line enumeration.

Some New Yorkers have been looking around for somebody to blame for the loss of their congressional seat -- a villain. However, when it comes to crossing a magic threshold, any one of a multiplicity of factors might have a causal impact. As noted above, potential reasons as to why New York lost the seat include interstate migration, the impact of political appointees on how the census was conducted[[23]](#footnote-24), low census compliance, inadequate census outreach, as well as the particular rule adopted for reapportionment of the U.S. House of Representatives (Balinkski and Young, 1974; 2001; Owens 1921; Young 2004).

Like seven other states this round of apportionment, New York has lost a seat -- what had previously been its 27th seat. Like the many different states in previous rounds in a similar situation, New York will have to learn to live with the loss. Litigation is likely to be brought claiming that some method or procedure is responsible for fewer people being counted than actually live in New York. Like most lawsuits over the census counts (*Department of Commerce v. Montana*, 503 U.S. 442 (1992); *Wisconsin v. City of New York*, 517 U.S. 1 (1996); *Department of Commerce v. U.S. House of Representatives*, 525 U.S. 316 (1999); *Utah v. Evans*, 536 U.S. 452 (2002)), New York is likely not to prevail. After all, it will not be possible to sue a virus – even though the virus has been clearly confirmed to be a villain. On the other hand, while it is natural for New Yorkers to focus on the loss of a seat, a countervailing point is that New Yorkers should actually be rejoicing that they lost only one congressional seat and not two.

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