

MEMORANDUM

TO: Michigan Independent Citizens Redistricting Commission (MICRC)

CC: MICRC & MDOS Staff

FROM: Julianne V. Pastula, Esq. *JVP*
General Counsel, MICRC

DATE: April 14, 2021

RE: **Updates on Legacy Format Data and the Petition to Michigan Supreme Court
for Relief from the November 1 Deadline**

This memorandum provides an update on the release of legacy format summary redistricting data files (“legacy format data”) as well as an analysis of such data and its recommended use by the MICRC. A corresponding update regarding the petition to the Michigan Supreme Court is also provided as well as a resolution for consideration.

Background

The decennial census data, specifically the population count, is important¹ because it determines reapportionment of the 435 seats² in the U.S. House of Representatives, setting the number representing each state in Congress for the following decade.³ The more detailed dataset known as redistricting counts, or the Census P.L. 94-171 data, is critical for redistricting state legislative districts because it provides geographic and spatial detail on where people live and their key demographic characteristics.

¹ The decennial population count also informs the amount of federal funding local communities will receive for federal programs and infrastructure initiatives such as roads, schools, housing, and social programs.

² Reapportionment by the federal government will inform the MICRC of the number of congressional districts that will need to be drawn. Michigan’s delegation has been reduced by one seat in the U.S. House of Representatives due to a loss of population each of the last four census cycles. It is anticipated that Michigan will lose at least one seat this cycle due to continued population loss. Projections by both Election Data Services and The Brookings Institution estimate that 17 states stand to gain or lose congressional seats.

³ Under the federal constitution each state has two senators. U.S. Const, Art I, § 3.

Based on the delayed release of reapportionment⁴ and redistricting data⁵ from the U.S. Census Bureau, the Michigan Independent Citizens Redistricting Commission (“MICRC”) elected to take a proactive course of action and on March 5th authorized its General Counsel to petition the Michigan Supreme Court for relief⁶ in the form of a modified final deadline⁷ and to pursue such relief in tandem with the Secretary of State (as the non-voting secretary to the MICRC and as the state’s chief elections officer).⁸ It is important to note the use of legacy format data will not have a meaningful impact on the MICRC’s ability to perform its duties under the current constitutionally imposed deadline that requires the adoption of final plans by November 1.

On March 12th, the U.S. Dept. of Justice (“DOJ”) filed a response on behalf of the U.S. Census Bureau (“Bureau”) in the State of Ohio’s federal lawsuit⁹ seeking to compel the Bureau to release census data by the statutory deadline.¹⁰ In a declaration attached to the DOJ response, James Whitehorne, Chief of the Redistricting and Voting Rights Data Office of the Bureau,¹¹ attested that the Bureau could have data that could be released to all states by mid-to-late August as “legacy format summary redistricting data files.”¹² The federal lawsuit was dismissed by the federal court on March 24th and an appeal has been filed.

In a memorandum dated March 23rd, General Counsel presented the MICRC with negotiated options for proposed amended deadline dates to be included in the petition to the Michigan Supreme Court¹³ and highlighted the introduction of the legacy format data issue. This information was presented at the March 25th meeting of the MICRC. At that time, the focus was obtaining authorization on the proposed dates because the current constitutional deadlines could not be met, even if legacy format data could be used by the MICRC.¹⁴ The March 23rd memorandum noted further research and analysis was necessary relative to the legacy format data and its potential use by the MICRC, necessitating a supplemental memorandum.

⁴ Deadline under federal law is December 31, 2020. 13 USC 141(b). The Bureau indicated the apportionment data would not be released until April 30. See *Census Bureau Statement on Apportionment Counts*, Release Number CB21-RTQ.06, 1/28/21.

⁵ Deadline under federal law is April 1, 2021. 13 USC 141(c). The Bureau indicated the P.L. 94-171 redistricting data would not be released until July 30, then shifted it to a September 30 release date. See *Census Bureau Statement on Redistricting Data Timeline*, Release Number CB21-CN.14, 2/12/21.

⁶ Since March 5th, General Counsel has been working to effectuate the MICRC’s directive and collaborating with attorneys from the Department of the Attorney General, Civil Litigation, Employment & Elections Division as well as the MDOS Chief Legal Director.

⁷ Section 6(7) of Article 4 of Michigan’s 1963 Constitution explicitly states that the MICRC must adopt redistricting plans “[n]ot later than November 1 in the year immediately following the federal decennial census.”

⁸ Resolution 2021.02.10, adopted on March 5, 2021.

⁹ *Ohio v. Raimondo*, Case: 3:21-cv-00064-TMR, 02/25/21, ECF No. 6.

¹⁰ 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.

¹¹ The U.S. Census Bureau also released a statement on March 15th which aligned with the contents of Mr. Whitehorne’s declaration filed in the Ohio litigation.

¹² The tabulated, “user-friendly” redistricting data is still on track for release by September 30.

¹³ It is important to note that the petition is a request for relief, and the Michigan Supreme Court has discretion whether to offer any relief or even address the petition.

¹⁴ Resolution 2021.02.17, adopted on March 25, 2021.

This is the supplemental memorandum to provide the relevant updates to the MICRC regarding legacy format data, including its prospective use as well as its potential impact on the petition for relief to the Michigan Supreme Court.

Update on Legacy Format Data & Analysis

This has been a rapidly evolving situation since it was raised at the MICRC's March 25th meeting. Not only was clarity needed on the legacy format data, but its impact, if any, on its use by the MICRC and the petition to the Michigan Supreme Court needed to be ascertained as well.

In his declaration filed in the Ohio lawsuit, Mr. Whitehorne stated the legacy¹⁵ format data is "an older format of data" the Bureau developed "decades ago."¹⁶ In his declaration, he categorized the 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:¹⁷

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 30.¹⁸ This caution required further investigation into the legacy format data itself as well as its processing.

Since March 25th, MICRC and MDOS staff have engaged in discussions with the Center for Shared Solutions (CSS), the State Demographer, the Enhanced Redistricting Data Access Program Committee and Election Data Services ("EDS") regarding whether the capacity or resources are available to tabulate the data from these legacy format summary files. The consistent response was that the legacy format data is a format that these experts are familiar working with, it is not a new data structure, they expect to work with data in this format, and this comfort level extends to the necessary processing of such data. This processing is expected to involve, in part, generating tabular information and maps using the new geoheader information, modified, new or reordered data segments as well as files that are all pipe-delimited for the 2020 Census files rather than the combination fixed width, comma delimited files used in the 2010 Census. The release of

¹⁵ *Merriam-Webster's Dictionary* (11th ed) provides the following definitions for the use of *legacy* as an adjective:
1. of, relating to, or being a previous or outdated computer system. (e.g., transfer the legacy data; a legacy system);
2. of, relating to, associated with, or carried over from an earlier time, technology, business, etc.

¹⁶ 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 and Whitehorne Decl. ¶ 25.

¹⁷ *Id.*

¹⁸ See notes 8 and 12.

apportionment data on April 30 will also offer early clues on the redistricting data. All the experts highlighted the August and September deliveries are the same census data, just in different formats. These opinions were further confirmed in an April 1st communication from the Bureau, which is discussed next.

On April 1st, James Whitehorne, Chief of the Redistricting and Voting Rights Data Office of the Bureau, distributed a letter again acknowledging the difficulties the September 30 release date could have on the states and affirming the release of the legacy format data in August.¹⁹ (Copy attached). This letter provided additional clarity and assurances as follows:

- Legacy format summary files are currently scheduled to be released mid-to-late August (expected during the 3rd week of August).
- The legacy files will be published to the web and available to the states and the public.
- Bureau 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 materials and tools that will be provided in September.
- The legacy format files will have been fully reviewed and subject to the same exacting quality assurance processes as the data delivered in September.
- Bureau noted “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.”²⁰
- Bureau expects many states will use the legacy format files “because they have used similar products in the past.”²¹

Again, the statements of the subject-matter experts that MICRC and MDOS staff consulted were confirmed by the Bureau in its April 1st correspondence. The MICRC has consistently expressed an interest in utilizing alternative data sets, such as the American Community Survey and population estimates, in advance of receiving the census data to conduct its work. Utilization of the legacy format data, as well as the alternative data sets, would enable the MICRC to have access to 2020 census data in advance of the September 30 release date and begin line drawing with census data earlier than previously anticipated.

A significant part of the research and analysis on whether to utilize legacy format data was not only to gain an understanding of the data itself, but to examine risk, if any, associated with its use. The Bureau has confirmed that the August delivery, while in a legacy format, will contain identical data to the materials delivered in September. The data, because it is identical in both

¹⁹ This correspondence was sent via email on April 1 to Michigan’s official liaison to the Bureau as well as the MICRC Executive Director who shared it with MICRC and MDOS staff.

²⁰ Letter from Mr. James Whitehorne to the Official Recipients of the 2020 Census P.L. 94-171 Redistricting Data, page 1.

²¹ *Id.*

deliveries, will have undergone the same review and quality assurance processing. As noted in the DOJ response in the Ohio lawsuit, the identified risk is in the processing of the legacy format data. Retaining a very experienced consultant also has a corresponding reduction in that risk for the MICRC.²² EDS is familiar with the legacy format data and has indicated it will take approximately 7-10 days to process the Michigan data. Lastly, EDS has confirmed that it will reconcile the legacy format data with the September delivery of materials and tools to verify data integrity. This is also expected to take between 7-10 days. Each of the foregoing operate as risk mitigation and reduce the impact of any potential risk.

Therefore, it is recommended that the MICRC utilize the legacy format data in addition to alternative data sources. EDS can perform the necessary data processing and will also conduct a reconciliation process when the P.L. 94-171 census data is released (expected September 30). Depending on the timing of the legacy format data release, this could result in a gain of between 2-4 weeks of time that the MICRC would have access to census data.

Impact on Request for Relief to the Michigan Supreme Court

The initial draft of the petition provided to the Dept. of the Attorney General did not include any reference to legacy format data because it had not been identified as a possibility until the March 12th filing by the Department of Justice ("DOJ") in the Ohio litigation. Prior to the DOJ's response, the argument in the petition was very concise: Based on the constitutional deadline the MICRC was required to publish plans by September 17th and was to receive census data on September 30th.

In full candor to the Court, the draft petition was edited to include a reference to legacy data, which made the argument on behalf of the MICRC more nuanced. After the Ohio lawsuit was dismissed, the questions surrounding the legacy data remained and expanded to whether the Bureau still intended to release it in August, further clouding the issue. After conducting further due diligence on the legacy format data issue and receiving assurances not only from subject-matter experts, including EDS, but also the Bureau, the petition was further modified to reflect the potential for its use, but still lacked the clarity on whether it was advisable to use which was needed to fully integrate it into the petition.

The final conversations with EDS on Friday, April 9th and Tuesday, April 13th, have given the additional clarity on the potential for use of legacy format data, therefore it is recommended that the MICRC avail itself of the earlier released census data in addition to alternative data sources.

²² It is appropriate to include a status update on the EDS contract, which is close to being finalized. Since the original authorization on March 4, the MICRC approved the language in Appendix B on March 18, and it was forwarded to the vendor. During the week of March 22nd, EDS provided notice that it agreed with Appendix B. The week of March 29 EDS, MICRC, MDOS and DTMB staff began verifying IT requirements for all parties (e.g., software, cybersecurity, hosting and support). These discussions are expected to conclude this week.

The request for relief in the draft petition currently reflects a 72-day extension from census data released on September 30, which was authorized by the MICRC.²³ It also includes language recognizing that if the data is received after September 30, that the 72-days would run from that date and encompass the delay in delivery. This was discussed as an option to accommodate any “additional federal delay” like the relief granted in California’s request for an extension.

Given the recent clarity regarding the legacy format data and the prospective early release of data, MDOS has requested a corresponding accommodation in the request for relief.²⁴ The proposed language follows:

“If the U.S. Census Bureau transmits redistricting data to the State of Michigan earlier than September 30, 2021, the MICRC will make every effort to expedite the process and adopt a final plan by a corresponding number of days in advance of the January 25, 2022 deadline.”

With this language, the MICRC would use its best efforts to release the preliminary and final plans a corresponding number of days from the date the census data is received in advance of September 30 so that the final vote could occur in advance as well, enabling the Bureau of Elections to begin its downstream elections work.²⁵ This aligns with the language currently in the draft petition accommodating the “additional federal delay” if the redistricting data were to be delivered later than September 30 to also reflect that the 72-days would run from the earlier date of delivery as well. While this was not a formal part of the MICRC’s prior authorization for relief²⁶, it was highlighted as a goal during the discussion on March 25.

Conclusion

Given the recent clarity on both the ability to process and use legacy format data as well as the mitigation of potential risk, it is recommended that the MICRC utilize the early release of legacy format data in its work. This clarity also supports the modification of the request for relief to run 72-days from the receipt of census data, whether it is in advance of, on, or after September 30. A resolution has been prepared for consideration.

²³ Resolution 2021.02.17 to request a 72-day extension, adopted March 25, 2021.

²⁴ It should be noted that any relief sought from statutory deadlines will be pursued separately from the petition.

²⁵ In particular, the update of Michigan’s qualified voter file (QVF), which is an electronic list of all registered voters in the state - almost 8 million people - based on the district plans adopted by the MICRC. Historically, this process takes approximately 6 months. After the QVF is updated, voting precincts must also be reviewed and modified as necessary, then verified by local jurisdictions.

²⁶ Due to unknowns regarding legacy format data at that time and the reality that, even if the MICRC could utilize legacy format data, it would not have a meaningful impact on the MICRC’s ability to perform its duties under the current constitutionally imposed deadline that requires the adoption of final plans by November 1.

04/01/2021

Dear Official Recipients of the 2020 Census P.L. 94-171 Redistricting Data,

The Census Bureau announced on February 12, through a [blog](#) and a [press release](#), a revised timeline for producing and delivering high-quality redistricting data products to the states. Establishing a date against which states could rely on to receive their redistricting data required the Census Bureau to identify exactly which activities need to be completed and in what sequence, as well as setting the time and resources needed for each of these steps. Based on this review, we determined it will take until September 30, 2021, for us to complete and deliver the full set of planned redistricting data products.

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. Through 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.

Legacy Format Summary Files:

- Published to the web in mid-to-late August.
- Available to the states and the public.
- Identical data to the materials and tools provided in the September delivery.
- Fully reviewed and subject to the same exacting quality assurance processes.

In September, we will provide states the remainder of the planned data products/tools. DVDs and flash drives will be provided to official state recipients, those required by law. The states and the public will also receive access to the data through our [data.census.gov](#) Data Explorer platform.

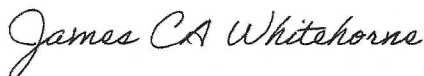
- The DVDs and flash drives contain an integrated software browsing tool that allows intuitive browsing of the data. They also contain a simple custom extraction menu that allows for the extraction of large datasets from the device. Those extractions can then be imported easily into a Geographic Information System or database.
- The Data Explorer web tool at [data.census.gov](#) is our online data browsing tool for both the official recipients and the public. Users of the Data Explorer platform can access many different census datasets, including the redistricting data. The Data Explorer has

custom filters that allow the user to filter on those geographic and characteristic data for which they are interested. For example, a state could filter the data and easily identify the number of voting-age residents by race or ethnicity in each and every block within a census tract, county, or even for the entire state. They can then view, map, and download these datasets once they have set the filters with their choices.

This dual release of data, in August and September, has made for one additional alteration to our data release plan. Our original plan had all three of these methods available simultaneously in late September. As part of that plan, we built in an ability for you, as an official recipient, to access our data.census.gov platform a day before the public through a data embargo. Now, with the release of the summary file data a month in advance, this provision no longer makes sense and so has been removed.

To assist states with the August delivery, we recently posted a [legacy format summary file of the prototype redistricting data tabulations](#) released from the 2018 End-to-End Census Test in Providence County, RI. These files are in the format that states can expect when they receive the 2020 redistricting data. We also posted the 2020 technical documentation that will accompany the 2020 redistricting data. We are also continuing to identify support documentation and tools that may assist some data user in the use of these files. They will be added to the website as they are developed. I encourage you, your staff, or your legislative support team to review the prototype in preparation for the August publication of the 2020 Census P.L. 94-171 Legacy Format Summary Files.

Sincerely,

A handwritten signature in black ink that reads "James CA Whitehorne". The signature is written in a cursive, slightly informal style.

James Whitehorne

Chief, Census Redistricting & Voting Rights Data Office