

# Gerrymandering Away Missouri's Future

Excluding children and noncitizens from redistricting calculations would exacerbate racial inequality.

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# Introduction

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In November 2018, Missouri voters passed a ballot initiative designed to bring independence and racial and partisan fairness to a redistricting process often waylaid by incumbent protection, political interests, and partisan deadlock. The success of these reforms at the ballot box demonstrated the broad desire in Missouri for fairer redistricting and was the product of years of advocacy and coalition-building.

However, just two years later, lawmakers are seeking to dismantle these reforms. Amendment 3, which will be on the ballot in November 2020, would roll back voter-approved protections, resurrecting some of the worst parts of the old, abuse-prone system. Troublingly, Amendment 3 would go even further, also opening the door to changing who will count when districts are drawn.

Every ten years, political districts around the country are redrawn, or redistricted, to make sure that they are roughly equal in population, as required by the U.S. Constitution. Currently, all 50 states use total population when doing this, which ensures that everyone is considered when drawing district boundaries. Amendment 3 would replace the Missouri Constitution's current total-population language with new language that, according to its proponents at least, would allow map drawers to consider only the number of U.S. citizens over the age of 18 (that is, adult citizens) when sizing districts, effectively cutting out children and noncitizens from representation.

Should Amendment 3 pass and its proponents convince map drawers to make Missouri the first state in the nation to exclude children and noncitizens from apportionment, the resulting districts would have starkly different populations.

Given Missouri's current population, each state senate and house district should have roughly 179,000 and 37,500 people, respectively, when lines are redrawn in 2021. But under a switch to adult citizen apportionment, each senate and house seat would need to have 135,000 and 28,000 *adult citizens*, with no regard for the number of children or noncitizens residing within each district.<sup>1</sup> Because children and noncitizens are not evenly distributed across the state, districts drawn on the basis of adult citizens would have wildly differing total populations. And this, in turn, means that Missourians who live in communities with many children or noncitizens would get less representation than others.

Such a change would be a radical departure from current practice and historical norms. Indeed, the text of the Missouri Constitution has required the use of total population as the relevant basis for districts since 1875.<sup>2</sup> Amendment 3 appears to be the vanguard of a broader conservative strategy to exclude children and noncitizens from being counted.<sup>3</sup> The politicians and lobbyists behind the measure have close ties to national conservative operatives including Thomas Hofeller,<sup>4</sup> whose posthumously released memos revealed a scheme among high-ranking Republican donors and operatives to encourage states to make a "radical departure" from total population to adult citizen apportionment, arguing that it would be "advantageous to Republicans and non-Hispanic whites."<sup>5</sup>

This analysis looks at what the distribution of representation would be under adult citizen-based districts. To be sure, Amendment 3 does not *require* Missouri to depart from its long-standing practice of total population-based apportionment. And any attempt to draw maps based on adult citizens would leave Missouri vulnerable to a host of lawsuits. But should those behind Amendment 3 succeed in transforming who counts when districts are drawn, the effects on the state, and on Black, Latino, and Asian communities in particular, would be profound:

- More than a quarter of all Missourians would be left uncounted. Among the uncounted, more than 90 percent would be citizen children.
- There are stark racial disparities in who would get excluded. Only 21 percent of Missouri’s white population would go uncounted. By contrast, 28 percent of Missouri’s Black population, 54 percent of its Asian population, and 54 percent of its Latino population would be erased when district lines are drawn.
- The two large metropolitan areas in Missouri — greater Kansas City and the St. Louis suburbs — would be hit especially hard, losing the most representation.
- Three of the four majority-Black senate districts in Missouri would need additional adult citizens, making it harder for communities of color to maintain their current level of political influence in these and surrounding districts.

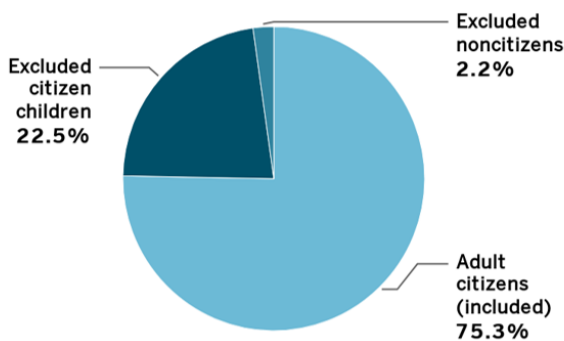
## Who Would Be Excluded from the Count?

A shift to adult citizen apportionment would mean excluding a substantial portion of the population when drawing districts — specifically, children under 18 and noncitizens. Roughly 1.5 million people in Missouri — nearly a quarter of the population — would be erased from the count under such a shift. Households with children would bear the brunt of the change; more than 91 percent of the excluded population would be citizen children.

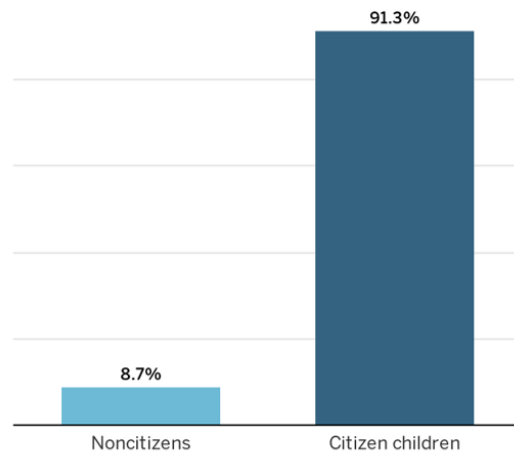
### Excluded Population Under Adult Citizen Apportionment

More than 1.5 million people, mostly citizen children, would not be counted under adult citizen apportionment.

TOTAL POPULATION



EXCLUDED POPULATION



Source: Brennan Center analysis of the U.S. Census Bureau’s CVAP special tabulation from the 2018 five-year American Community Survey estimates.

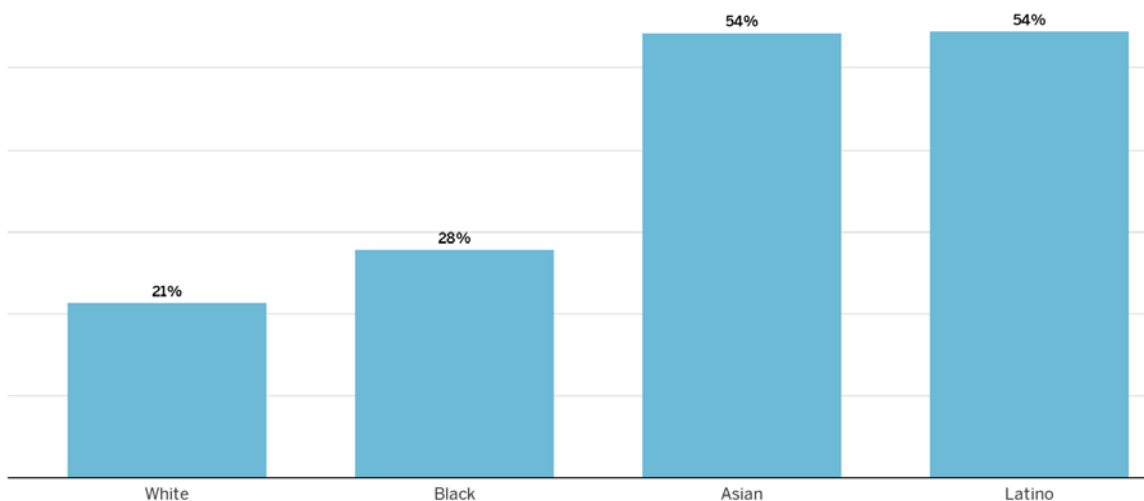
Notably, many of the excluded children will turn 18 and become eligible to vote at some point during the decade that the district maps are in effect.<sup>6</sup> Nonetheless, under adult citizen apportionment, even these future eligible voters would not be counted.

Worse yet, the shift to an adult citizen apportionment base would yield sharp racial disparities. Only 21 percent of Missouri’s white population would be excluded under this shift, as compared to 28 percent of the state’s Black population, 54 percent of its Asian population, and 54 percent of its Latino population.

The white population makes up roughly 79.5 percent of all Missourians but more than 83 percent of adult citizens. Thus, under adult citizen apportionment, the white population would account for a larger percentage of those counted for representation than it does under total population apportionment.

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### Percentage Excluded Under Adult Citizen Apportionment by Racial/Ethnic Group



Source: Brennan Center analysis of the U.S. Census Bureau’s CVAP special tabulation from the 2018 five-year American Community Survey estimates.

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These disparities are largely driven by differences in the proportion of children among Missouri’s racial and ethnic communities. This is because 26 percent of Black and 37 percent of Latino communities are minors, meaning that these groups would be especially hard-hit by a measure that principally functions to exclude children from the count.

## Which Communities Would Lose Representation?

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In order to fully understand the ultimate representational impact of a shift to adult citizen apportionment, it is also necessary to assess the geographic distribution of Missouri’s population. If children and noncitizens were evenly distributed across Missouri, no communities would lose representation with a shift to adult citizen apportionment. In other words, all areas of the state and all of its communities would see the same proportional population reductions and therefore receive the same number of representatives as before.

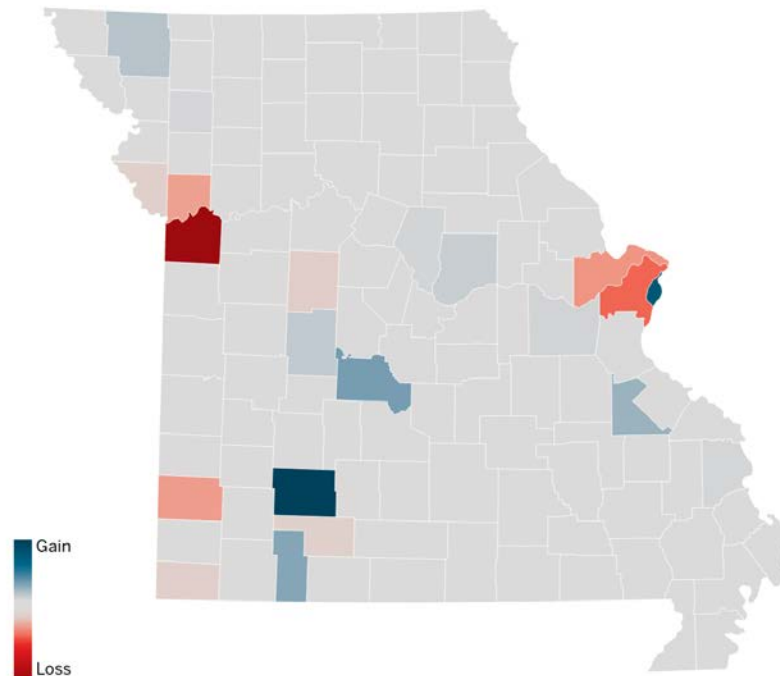
But, if impacted households are instead clustered within a particular region or county, then certain communities will suffer representational loss — that is, receive fewer districts (or a smaller share of a district) than they would if their entire population was counted. Meanwhile, communities with a smaller share of children and noncitizens will receive a windfall, gaining that representation.

Based on the distribution of the excluded population, the two large metropolitan areas in Missouri — greater Kansas City and the St. Louis suburbs — stand to lose the most representation under adult citizen apportionment. The impact would be most felt by Jackson and Clay Counties in western Missouri, St. Louis and St. Charles Counties in eastern Missouri, and Joplin County in southwestern Missouri.

When this analysis is applied to the current state senate map, the discriminatory impacts become more concrete.

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### Representational Changes by County



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Under adult citizen apportionment, each senate district would need to have close to 134,882 adult citizens to be perfectly apportioned. In practice, states are allowed to deviate, so the acceptable range for each seat would be from approximately 128,138 to 141,626 adult citizens.<sup>7</sup> Districts below this range would need to be redrawn to raise their adult citizen population and those above the threshold redrawn to lower it. Communities that end up in underpopulated districts would suffer at least some harm, because additional constituents would be added without any additional representation.<sup>8</sup>

The table below lists the six senate districts that would need to bring in additional adult citizens, thus raising their overall population.

## Missouri Senate Districts Underpopulated Under Adult Citizen Apportionment

DISTRICT NUMBER	ADULT CITIZENS NEEDED	REPRESENTATIVE	REGION	BLACK-MAJORITY DISTRICT
9	10,008	Vacant, formerly S. Kiki Curls (D)	Kansas City	Yes
11	6,418	John Rizzo (D)	Kansas City	No
14	4,368	Brian Williams (D)	St. Louis County	Yes
13	4,308	Gina Walsh (D)	St. Louis County	Yes
25	3,213	Doug Libla (R)	Southeast	No
8	2,938	Mike Cierpiot (R)	Kansas City	No

**Source:** Brennan Center analysis of the U.S. Census Bureau's CVAP special tabulation from the 2018 five-year American Community Survey estimates.

Senate districts 9, 13, and 14 would be three of the four most underpopulated districts under adult citizen apportionment. They are also three of the four majority-Black districts in Missouri, each of which has sent Black representatives to the state capital. Collectively, these districts currently represent 42 percent of the state's Black population.<sup>9</sup> Likewise, Districts 9 and 11 have the two highest Latino populations among the state's senate districts.<sup>10</sup>

All of these underpopulated districts would have to be redrawn to bring in thousands of extra adult citizens, which would significantly change the demographic makeup of either these or surrounding districts. The outcome would potentially dilute the political power of Black communities in the very districts designed to empower them, or it could reduce the number of Black constituents in neighboring districts. Either way, the political power of Black communities would likely be diminished under adult citizen apportionment.

Importantly, the senate districts most affected by a shift to adult citizen apportionment also contain neighborhoods that have been the target of state-sponsored segregation and racist disinvestment. For example, District 9, which would bear the most severe underpopulation, runs directly along the east side of Troost Avenue, a street infamous for its function as a de jure border of racial segregation in Kansas City during Jim Crow.<sup>11</sup> Today, Troost Avenue still operates as a "dividing line"<sup>12</sup> between majority-Black and historically disinvested neighborhoods to the east and mostly white and wealthier neighborhoods to the west.<sup>13</sup>

Likewise, underpopulated districts in the St. Louis area map onto geographic racial divides. Districts 13 and 14 cover much of the area north of the "Delmar Divide."<sup>14</sup> The street, synonymous with redlining and racially restrictive covenants, separates predominantly white neighborhoods to the south from predominantly Black ones to the north. Indeed, Districts 13 and 14 together cover Ferguson and Florissant, where in the context of a voting rights lawsuit a federal court recently identified that "once-formalized policies of racial segregation" are still "inscribed on the regional landscape" and a "racialized gap in wealth" "persists to the present day."<sup>15</sup>

That the districts most vulnerable to representational loss under adult citizen apportionment map neatly onto areas still struggling against the legacy of racism reveals that such a shift would, at least in effect, perpetuate an ugly history of discrimination against communities of color in Missouri.

# Conclusion

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A shift to adult citizen apportionment in Missouri would cut nearly a quarter of the state's population — overwhelmingly children — out of being counted when districts are reconfigured. In a state whose constitution has contemplated all of its inhabitants as counting since 1875, such a change would not only be a stark departure from historical norms but also a serious obstacle to communities of color receiving fair representation. Missouri's Black communities have endured a long and unbroken legacy of discrimination and face disparities in income, education, housing, health, and other key equity indicators when compared to their white counterparts.<sup>16</sup> Limiting representation to adult citizens would likely compound and exacerbate these inequalities, deepening existing divisions.

*This analysis is adapted from a forthcoming report by the Brennan Center for Justice studying the impact of adult citizen apportionment in three states. Yuriy Rudensky, Ethan Herenstein, Annie Lo, and Peter Miller are the authors of that report, and their work is reflected here as well.*

# Endnotes

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<sup>1</sup> These numbers are derived from the American Community Survey (ACS) 5-Year Estimates and Citizen Voting Age Population Special Tabulation, which provide the most recent count of Missouri's total population and adult citizen population. By dividing those totals by the number of state house and senate districts, we can predict the size of Missouri legislative districts under each apportionment basis. U.S. Census Bureau, "2014–2018 5-Year American Community Survey," <https://www.census.gov/data/developers/data-sets/acs-5year.html>; and U.S. Census Bureau, "Citizen Voting Age Population (CVAP) Special Tabulation from the 2014–2018 5-Year American Community Survey," <https://www.census.gov/programs-surveys/decennial-census/about/voting-rights/cvap/2014-2018-CVAP.html>.

<sup>2</sup> See Mo. Const. of 1875, art. IV, § 2, 5, 7, 9; and Mo. Const. art. III, § 3(c)(1) (amended 2018).

<sup>3</sup> Indeed, litigation around the addition a citizenship question to the 2020 Census revealed the interest on the part of prominent conservative strategists to exclude noncitizens and children from the apportionment count for political gain. See Letter Motion to Compel Defendants to Show Cause at Exhibit D, *New York v. U.S. Dep't of Commerce*, No. 18-cv-2921 (S.D.N.Y. 2018). Further, the *Guardian* reported connections between Amendment 3's backers and national conservative operatives that indicate this state effort is in coordination with and a precursor to a larger national Republican strategy: "Some activists believe national Republicans are involved. . . . Dale Oldham, a top Republican redistricting consultant and [Thomas] Hofeller's longtime business partner, and Adam Kincaid, who leads the National Republican Redistricting Trust, met with the Missouri senate president in April 2019, according to a calendar invitation obtained by Clean Missouri and provided to the *Guardian*." Sam Levine, "Missouri Republicans on the Verge of Gutting Gerrymandering Reform," *Guardian*, May 11, 2020, <https://www.theguardian.com/us-news/2020/may/11/missouri-republicans-gutting-gerrymandering-reform>.

<sup>4</sup> The law firm that drafted Amendment 3 previously represented the National Republican Redistricting Trust in gerrymandering litigation. Graves Garrett LLC, "Supreme Court Adopts Position of Graves Garrett Client in Gerrymandering Case; Greim, Luetkemeyer Author Op-Ed on Rulings for USA Today," July 16, 2019, <https://www.gravesgarrett.com/supreme-court-adopts-position-of-graves-garrett-client-in-gerrymandering-case-greim-luetkemeyer-author-op-ed-on-rulings-for-usa-today/>. Graves Garrett also directly represented Thomas Hofeller when he was the only defense witness in a 2012 challenge to Missouri's maps. Brief of Intervenor Respondents, February 13, 2012, *Pearson v. Koster*, No. SC92317 (Mo. 2012).

<sup>5</sup> See Letter Motion to Compel Defendants to Show Cause at Exhibit D, *New York v. U.S. Dep't of Commerce*.

<sup>6</sup> Because maps are drawn every ten years, any child over the age of eight when the census is taken will be eligible to vote in at least one election before the next redistricting cycle.

<sup>7</sup> States are permitted to have districts that deviate up to 10 percent. See *Gaffney v. Cummings*, 412 U.S. 735 (1973). Accordingly, we took the total adult citizen population in Missouri and divided it by the number of state senate districts to derive the "ideal" adult citizen population (134,882) for each seat. We then calculated the lower threshold (128,138), which is 5 percent below the ideal, and the upper threshold (141,626), which is 5 percent above.

<sup>8</sup> If an area has enough underpopulated districts, one of two things could happen during the redistricting process. The map drawer could collapse the existing underpopulated districts into one another, reducing the number of districts that the area would receive and ensuring that each resident of the area would end up in larger districts. Or, in less extreme cases, the map drawer could simply expand the borders of the underpopulated districts to bring in additional adult citizens from nearby overpopulated districts. This would mean that most residents in underpopulated districts would end up in larger districts while those in overpopulated districts would mostly end up in smaller ones. Even these seemingly small changes, repeated again and again across a state, could dramatically transform the makeup of a legislature, shifting power from areas of the state that lose representation and toward areas that gain it. In either case, areas that lose representation and communities that end up in underpopulated districts stand to receive less representation during the next redistricting cycle.

<sup>9</sup> ACS 2018 5-Year Estimates show these are the three senate districts with the highest percentage of Black people. There are 295,830 Black people currently residing in these districts, making up 42 percent of Missouri's entire Black population (701,990). U.S. Census Bureau, "2014–2018 5-Year American Community Survey."

<sup>10</sup> Districts 9 and 11 have 18,284 and 21,491 Latinos, respectively. Latinos make up 10.9 percent and 12.8 percent of their respective populations. U.S. Census Bureau, "2014–2018 5-Year American Community Survey."

<sup>11</sup> "Under Jim Crow laws, Troost Avenue was used to legally enforce segregation prior to the civil rights movements of the 1960s. It also was used by Kansas City Public Schools as a dividing line to keep schools segregated." Nick Starling, "Pray on Troost Highlights Need for Justice in KCMO on Juneteenth," *KSHB News*, June 19, 2020, <https://www.kshb.com/news/local-news/pray-on-troost-highlights-need-for-justice-in-kcmo-on-juneteenth>.



<sup>12</sup> Eric Salzman, “For Decades a Dividing Line, Troost Avenue in Kansas City, Mo., Sees New Hope,” NBC News, October 11, 2018, <https://www.nbcnews.com/news/us-news/decades-dividing-line-troost-avenue-kansas-city-mo-sees-new-n918851>.

<sup>13</sup> Briana O’Higgins, “How Troost Became a Major Divide in Kansas City,” KCUR, March 27, 2014, <https://www.kcur.org/community/2014-03-27/how-troost-became-a-major-divide-in-kansas-city>.

<sup>14</sup> Oscar Perry Abello, “Breaking Through and Breaking Down the Delmar Divide in St. Louis,” *Next City*, August 19, 2019, <https://nextcity.org/features/view/breaking-through-and-breaking-down-the-delmar-divide-in-st.-louis>.

<sup>15</sup> See *Mo. State Conference of the NAACP v. Ferguson-Florissant Sch. Dist.*, 201 F. Supp. 3d 1006, 1068–69 (E.D. Mo. 2016) (citations and quotations omitted), *aff’d*, 894 F.3d 924 (8th Cir. 2018).

<sup>16</sup> Jacob Barker, “Racial Disparities in Income and Poverty Remain Stark, and in Some Cases, Are Getting Worse,” *St. Louis Post-Dispatch*, August 7, 2019, [https://www.stltoday.com/news/local/metro/racial-disparities-in-income-and-poverty-remain-stark-and-in-some-cases-are-getting-worse/article\\_9e604fc3-c47d-581e-95a2-5a2166011a17.html](https://www.stltoday.com/news/local/metro/racial-disparities-in-income-and-poverty-remain-stark-and-in-some-cases-are-getting-worse/article_9e604fc3-c47d-581e-95a2-5a2166011a17.html).