

## The Quest for a Fourth Congressional District in Utah

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When Utah lost its battle in 2002 against the US Supreme Court for an additional congressional seat, the state's quest was far from over. Counting people is, in some cases, as politically charged as counting votes. For the past two weeks, Utah's legislature has relived the battle of yesteryear in ongoing efforts to gain one more seat in the House of Representatives. But many Utahns may question the validity of this quest, the origins of it, the direction the current debate is headed and its potential impact on Utah citizens. This paper will discuss the basics of the redistricting process, Utah's first battle for an additional seat in Congress and why this debate is now resurfacing, and the political and constitutional feasibility of gaining a fourth Utah representative in 2007.

### **History of Utah's Fourth Congressional District**

Utah's current quest for a 4<sup>th</sup> Congressional seat defies the traditional apportionment process set forth in 1911 under Public Law 62-5. The law caps the number of seats in the House of Representatives at 435 and states that the allocation of these 435 seats is determined by population. As state populations grow or shrink, so do their appropriated number of congressional representatives. Hence, the allocation of these representative seats among the 50 states changes as state populations fluctuate. Traditionally, reapportionment of the 435 seats follows the decennial census. If the reapportionment process changes a state's number of representative seats, the state will redraw the boundaries of congressional districts to appropriately reflect the changes.

Utah's battle for a 4<sup>th</sup> seat followed the 2000 Census when Utah missed getting an additional seat in the House by 857 people.<sup>1</sup> This slim margin of loss called the U.S. Census Bureau's counting methods into question. The state challenged the Bureau's practice of excluding overseas missionaries from the apportionment count. The argument's validity was based on the fact that residents living overseas who are stationed abroad in the military are counted toward the population of a state.<sup>2</sup> More than 11,000 Utah missionaries living abroad were not counted in the Census and North Carolina, the state that won the extra seat, had its 18,360 overseas residents serving in the military included in the population count.

Utah filed a lawsuit that eventually worked its way to the US Supreme Court in 2002. Attorney General Mark Shurtleff made the case that the US Census Bureau used illegal statistical sampling methods called "hot deck imputation" that cost Utah an additional vote in Congress. On March 27, 2002, Lead Counsel Tom Lee argued before the Supreme Court that the

Constitution requires an “actual enumeration,” as opposed to using “sampling methods”. The court ruled 5-3 against Utah, stating that the Census Bureau did not use illegal statistical sampling methods during the 2000 Census.<sup>3</sup>

Normally, Utah would have to wait until the 2010 Census to see if its growing population equates to another congressional seat; however, the DC Fair and Equal House Voting Rights Act pulled Utah back into the equation. In 2006 the Act was proposed by Rep. Thomas M. Davis of Virginia to give the District of Columbia its first seat in Congress and Utah an additional seat. Because DC is not technically a state in the union, it does not have a voting member of Congress, but the bipartisan support this Act has received could change that fact. Support from both parties has been wielded because DC would likely produce a Democratic seat and Utah’s largely Republican population would likely yield another seat for the GOP, thus making the Act politically neutral—at least, so far as the party tally in the House is concerned.

### **Constitutional and Political Questions**

The central Constitutional questions revolve around the status of Washington D.C. as a state or as a district and the timing of elections to the House of Representatives in Congress. Article I, Section 2 of the U.S. Constitution states that representatives to the House of Representatives are to be “chosen by people of the several *states*,” and that representatives must be “inhabitants of that *state*.” The argument was made in the Constitutional Convention that the seat of government should be completely removed from the jurisdiction of any state. Madison felt the need for “[t]he indispensable necessity of complete authority at the seat of government”<sup>4</sup>. Virginia and Maryland gave up part of their territory for the new district. The courts have also supported the concept that the District of Columbia operates “exclusive” of any state authority.<sup>5</sup> If the District of Columbia were to receive the same voting privileges as other states, should other U.S. governed territories such as Puerto Rico, American Samoa, Federated States of Micronesia, Guam, Midway Islands, and the U.S. Virgin Islands, also receive voting privileges in Congress?

A second Constitutional question concerns the timing of the selection of representatives to Congress. Article I, Section 8 also states that the “The actual Enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years...” The enumeration is the decennial census of citizens resulting in the allocation of seats in the House based on population. The last allocation was made following the 2000 Census and another would not be made until 2010. In Utah, the reapportionment of the three existing districts into four Congressional districts in 2006 is based on the 2000 Census even though there have been areas of dramatic growth in Washington County, south and west Salt Lake County, and other parts of the state.

There are a number of political questions that the Governor, legislators and the delegation in Washington, D.C. must ask in pursuing this issue.

- What are the benefits and costs to Utah? It is in Utah’s interest to gain an additional seat in Congress to add to its delegation and fairly represent the number of people living in the state. The population in Utah justifies an additional seat in Congress and the fourth seat will add to Utah’s voice in Congress. The US Code would have to be changed to allow the District of Columbia to have a voting member of Congress and to increase the size of Congress by two representatives. If passed, a new election involving all incumbent Congressmen and candidates for the new seat would have to be held since the district boundaries were redrawn; this election could cost Utah several million dollars.

- Is it worth the effort and cost to get an additional seat now rather than waiting for six years? An additional seat will almost certainly be added to Utah's delegation after the next Census in 2010, with Utah gaining a seat by 2012 (allowing time for the completion and compilation of the Census, and election of a new Representative to Congress). Any chances of gaining an additional seat now would come with the compromise of allowing Washington D.C. to have a voting representative. Utah's seat would almost certainly be Republican; Washington D.C.'s seat would almost certainly be Democrat. Why would Republicans want to allow the Democrats to have a seat when all they have to do is wait a few years to receive an additional Republican seat without the Democratic seat?
- Why push for an additional seat now? The chances of an additional seat in Congress for Utah will diminish with the new Congress in 2007. The new Democrat-controlled Congress will be less likely to give Utah a seat when they would potentially have the votes to pass legislation giving the District of Columbia a seat without balancing a "Democrat" seat with a "Republican" seat. Why would Democrats want to allow the Republicans to have a seat when all they have to do is wait another month?

### **The "DC Deal" – Proposals for a Fourth Congressional District in Utah**

The prospect of the "DC deal" passing has brought on a whole new slew of questions for Utahns. Who would fill the seat? Will the seat be at-large or will voting districts be redrawn? How and who will be responsible for redistricting? Is the act politically and constitutionally feasible? Even with the official redistricting plan, "Plan L," adopted November 29<sup>th</sup> of this year, many of these questions are yet to be answered.

The first version of the DC deal gave Utah an "at-large" seat, meaning that the new representative would serve the entire state and current voting districts wouldn't have to be redrawn until after the 2010 Census. The constitutionality of an at-large seat was called into question by many, claiming that an at-large representative would give Utah voters two representatives in Congress, while all other voters in the nation have one.<sup>6</sup> Congress said they would not act on the bill unless Utah's proposed 4<sup>th</sup> seat was assigned to a geographical district.<sup>7</sup>

In the event that the lame-duck session of Congress does pass the DC Fair and Equal House Voting Rights Act, Utah will celebrate by holding a special election in 2007 to put four representatives into office. The slate would be wiped clean and incumbents would have to run again to confirm their seat in the newly carved districts. The details of how the election will be carried out, however, remain unknown. Curtis Bramble, R-Provo and Chair of the redistricting committee, said lawmakers would likely wait until the 2007 Legislature meets in January to determine the structure of a special election process.<sup>8</sup> Although this special election could cost Utah around \$6 million dollars and a lot of additional sweat for all Utahns, the overwhelming majority of Utah leaders believe that an additional vote in Congress is worth it.

PLAN L  
Proposed Four-District Congressional Plan

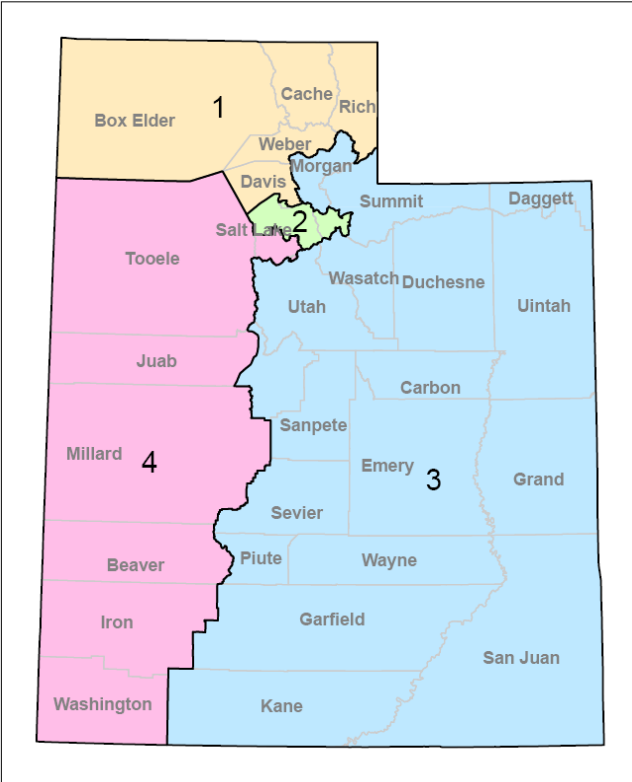


Image Source: Utah State Legislature, [le.utah.gov](http://le.utah.gov)

<sup>1</sup> “US Supreme Court Dashes Utah’s Hope for 4<sup>th</sup> Seat.” News Release from the office of the Utah Attorney General, 20 June, 2002

<sup>2</sup> “Setback to Delay Census Lawsuit.” Deseret News 7 March, 2001

<sup>3</sup> “US Supreme Court Dashes Utah’s Hope for 4<sup>th</sup> Seat.” News Release from the office of the Utah Attorney General, 20 June, 2002

<sup>4</sup> The Federalist, No. 43 (J. Cooke ed. 1961), 288-289. See also 3 J. Story, Commentaries on the Constitution of the United States (Boston: 1833), 1213, 1214.

<sup>5</sup> District of Columbia v. John R. Thompson Co., [346 U.S. 100](#) (1953), 109-110. See also Thompson v. Lessee of Carroll, [63 U.S. \(22 How.\) 422](#) (1860); Stoutenburgh v. Hennick, [129 U.S. 141](#) (1889).

<sup>6</sup> “Utah’s 4<sup>th</sup> Seat Should Wait.” The Daily Herald 24 Sept. 2006: A05

<sup>7</sup> “4<sup>th</sup> Seat in House, Clock is Ticking.” Deseret News 27 Sept. 2006: A01

<sup>8</sup> “Lawmakers Eye ‘07 Vote.” Deseret News 21 Nov. 2006: B01