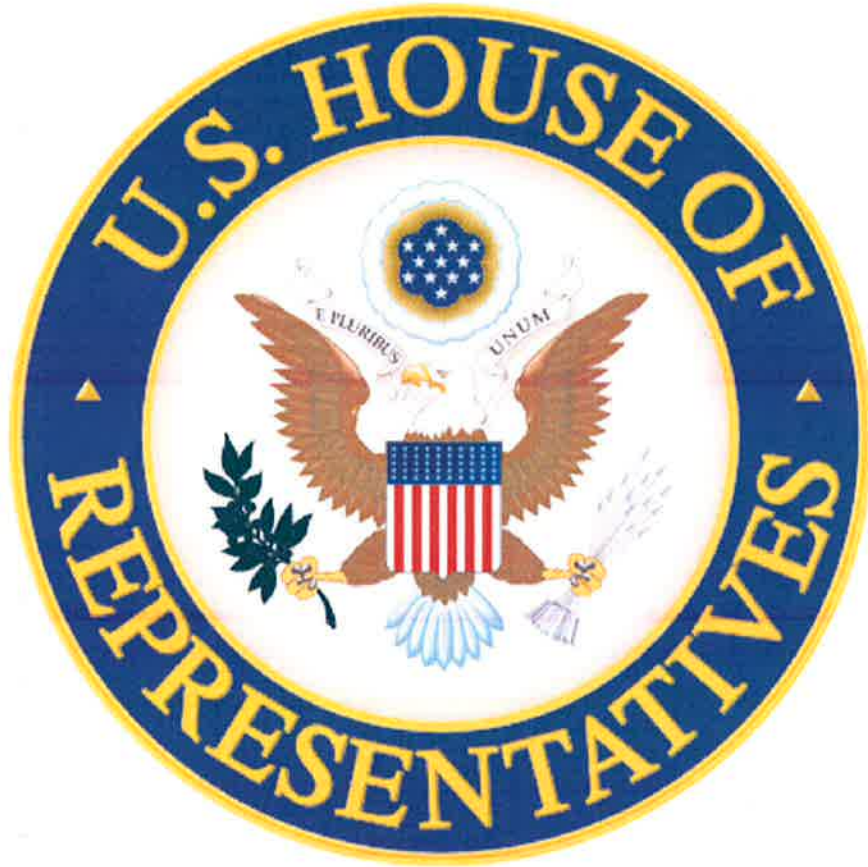


U.S. House of Representatives
Committee on Oversight and Government Reform
Darrell Issa (CA-49), Ranking Member



Census History:
Counting Every Person Once, Only Once and in
the Right Place

Staff Report
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I. EXECUTIVE SUMMARY

This report details the results of a historical analysis of attempted political manipulation of the Census spanning a timeline from before the U.S. Constitution was ratified to the present. The overall conclusion of this analysis is that the political manipulation of the Census or within the Census Bureau has been consistently rejected throughout the course of American history. Specifically, this report has led to the following findings:

- Past Decennials have been remarkably accurate and the 2010 Decennial Census has advantages, such as short-form only and better mapping technology that will make it even more accurate.
- The Census is a constitutional responsibility of the Legislative Branch of government, which has conditionally delegated the conduct of the Census to the Department of Commerce.
- Beginning with the Founding Fathers' debate over the U.S. Constitution, statistical adjustment, or the use of estimates in determining decennial population counts, has been dismissed as inaccurate, unconstitutional and unhelpful.
- The statistical adjustment of a Census is based upon the Post Enumeration Survey (PES), which is itself seriously flawed. Statistically adjusting a Census will thus result in more inaccuracy than an actual count.
- The professional staff at the Census Bureau themselves recommended against using statistically adjusted numbers for any reason during the 2000 Decennial.
- A more accurate census can best be achieved through better management, better use of enumerators, better implementation of technology, involving communities more and a more robust communications plan.
- Throughout history, partisan interference and political manipulation have been consistently rejected in favor of a nonpartisan Census Bureau.
- Because political representation in this country, via the apportionment of seats in the U.S. House of Representatives and the makeup of district boundaries, is based upon Census numbers, the results of any and every decennial must be fair, accurate and trustworthy.
- The current administration's recent attempts to exert political control over the Census were met with historically appropriate resistance and were rejected in favor of the apolitical and independently-acting Census Bureau.

II. INTRODUCTION

“Despite what you read in the newspapers, the census is remarkably accurate.”¹

The American Census is the largest peacetime mobilization of resources, both human and otherwise, undertaken throughout the history of the Nation. This mobilization occurs every ten years, and is required by the United States Constitution.

The Census is vitally important and is the very core of our representative system of government. The Census is so very important because “[c]ensus data are used to distribute Congressional seats to states, to make decisions about what community services to provide, and to distribute \$300 billion in federal funds to local, state and tribal governments each year.”² For these reasons, it is an inarguable fact that Census results need to be fair, accurate and trustworthy. For these reasons also, every ten years the Census is thrust to the forefront of political debate in the Nation’s capital.

It is important to note, however, that because of the necessity of producing fair, accurate and trustworthy Census results, the attempts at political machinations and interference that arise every ten years are met with fierce resistance on behalf of a nonpartisan, apolitical and independent Census Bureau. As history demonstrates, every ten years professional partisans attempt to inject themselves into the very serious business of counting every person in the United States; and yet every ten years these attempts are rightly foiled.

¹ David A. Freedman & Kenneth W. Wachter, *On the Likelihood of Improving the Accuracy of the Census Through Statistical Adjustment* (2002), reprinted with minor changes from SCIENCE AND STATISTICS: A FESTSCRIFT FOR TERRY SPEED, at 197 (D. R. Goldstein and S. Dudoit, eds., IMS Monograph 40 2003).

² Census Bureau home page, <http://www.census.gov> (last visited March 25, 2009).

III. THE BALANCE OF POWER: THE CENSUS IS A CONSTITUTIONAL RESPONSIBILITY OF THE LEGISLATIVE BRANCH OF GOVERNMENT

Any comprehensive discussion of the Census must begin with the paramount document upon which our nation's democracy was founded – the U.S. Constitution. The Decennial Census is a Constitutionally-mandated function of the Legislative Branch of the U.S. Government, as delineated in Article I. Article II, which defines the role of the Executive Branch of our national government does not outline a specific role regarding the Census. Jurisdiction over the Census is specifically and firmly rooted in Article I:

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, in such Manner as they shall by Law direct.³

Congress has delegated the conduct of the Census to the Department of Commerce, but has relinquished no Constitutional responsibility over the Census. According to Title 13 of the U.S. Code, the Bureau is to be administered “as an agency within, and under the jurisdiction of, the Department of Commerce.”⁴

The Congressional Research Service has acknowledged this delegation: “Congress, through Title 13 of the *United States Code*, has delegated this responsibility to the Secretary of Commerce and, within the Department of Commerce (DOC), to the Bureau of the Census.”⁵

U.S. Supreme Court Justice Sandra Day O'Connor has also acknowledged that Congress has “delegated” conduct of the Census to the Commerce Department. “Pursuant to this constitutional authority to direct the manner in which the ‘actual Enumeration’ of the population shall be made, Congress enacted the Census Act ... delegating to the Secretary of Commerce (Secretary) authority to conduct the decennial census.”⁶

In essence, through Title 13, the Legislature has parked the entity tasked with counting Americans within the Commerce Department and could, in theory, rescind this delegation and create any entity within its power to conduct the Census, including within the legislative branch, or within another existing federal entity. One example of such a non-partisan and apolitical Congressional entity is the Congressional Budget Office. The Congressional Budget Office was created by statute in 1975⁷ and its mandate is to

³ U.S. CONST. art. I, § 2, cl. 3.

⁴ 13 U.S.C. § 2.

⁵ Memorandum from the Congressional Research Service to the Honorable Patrick McHenry 1 (March 20, 2009) (on file with Committee on Oversight and Government Reform).

⁶ *Department of Commerce v. United States House of Representatives*, 525 U.S. 316, 321 (1999).

⁷ *Congressional Budget and Impoundment Control Act*, Pub. L. No. 93-344, 88 Stat. 297 (1974).

provide Congress with: “Objective, nonpartisan, and timely analyses to aid in economic and budgetary decisions on the wide array of programs covered by the federal budget and [t]he information and estimates required for the Congressional budget process.”⁸

As the Census is an Article I function, Congress, through U.S. Code, has given the Executive Branch two very minimal roles – the first is providing support for the Bureau in the form of information and resources. To this end, Title 13 expressly limits the interaction between the Secretary of the Department of Commerce and the Executive Branch, and, in fact, the entirety of the federal government. “The Secretary, whenever he considers it advisable, may call upon any other department, agency, or establishment of the Federal Government, or of the government of the District of Columbia, for information pertinent to the work provided for in this title.”⁹

The second role the Executive Branch plays is in the President nominating a Director of the Census. Yet, the Congress, through U.S. Code has delineated, and limited, exactly to whom the Director is responsible – which purposefully does not include the President. “The Bureau shall be headed by a Director of the Census, appointed by the President, by and with the advice and consent of the Senate. The Director shall perform such duties as may be imposed upon him by law, regulations, or orders of the Secretary.”¹⁰

Thus, it is inarguable that the Census is a constitutional responsibility of the Legislative Branch of government and that through U.S. Code, Congress has delegated the conduct of it to the Department of Commerce. This delegation in no way means that Congress has relinquished its constitutionally defined authority over the Census.

⁸ Congressional Budget Office home page, <http://www.cbo.gov> (last visited March 20, 2009).

⁹ 13 U.S.C. § 6(a).

¹⁰ 13 U.S.C. § 21

IV. ADJUSTMENT: INACCURATE, UNCONSTITUTIONAL & UNHELPFUL FOR OVER 200 YEARS AND COUNTING

“Nothing can be more fallacious than to found our political calculations on arithmetical principles...” - James Madison¹¹

As described by the Congressional Research Service, “The Census Bureau’s mandate in conducting the once-a-decade enumeration has been summarized very simply: count each person whose ‘usual residence’ is in the United States; count that person only once; and count him or her at the right location, where the person lives all or most of the time.”¹² Surprisingly, the Census Bureau has historically been highly successful in achieving this mandate.

And yet, unsurprisingly, a contentious battle over the use of “statistical adjustment” – the use of estimates in achieving population counts – has ensued over the course of every decennial, dating back to before the first census was ever even taken. To understand current debate over the conduct of the Census, it is necessary to study the debate over the very first Census, taken in 1790.

During the course of the public debate over the ratification of the Constitution, our Nation’s Founding Fathers argued over the use of estimation in counting the fledging country’s residents. Originally, taxation was based on population, and early Americans were concerned that taxation would be based on estimates subject to political manipulation, and not actual population counts:

In *The Federalist* No. 36, Alexander Hamilton, in attempting to reassure his audience that the population figures upon which taxation would be based would not be subject to political manipulation, stated that “an actual census or enumeration of the people must furnish the rule, a circumstance which effectively shuts the door to partiality or oppression.”

Similarly, Thomas Jefferson, in a 1791 letter discussing the first census, indicated that the census “is founded on actual returns” as opposed to being “conjectured.” George Washington, in a letter to Gouverneur Morris in the same year, contrasted an estimate with an enumeration, commenting that an “estimate” he had given “of the number of inhabitants which would probably be found in the United States on enumeration, was too large.”

Finally, the Census Act of 1790, establishing the first census, required an actual counting; census takers were required to swear an oath to “truly

¹¹ David F. Forte, *Allocation of Representatives*, in the HERITAGE GUIDE TO THE CONSTITUTION 57, 58 (Edwin Meese III, Matthew Spalding & David Forte, eds., 2005).

¹² Memorandum from CRS, *supra* note 5, at 1.

cause to be made, a just and perfect enumeration and description of all persons resident within [their] districts.”¹³

Moreover, Justice Antonin Scalia has further shed light upon the original intent of the Framers to thoughtfully discount the idea of estimation in favor of enumeration. “Dictionaries roughly contemporaneous with the ratification of the Constitution demonstrate that an ‘enumeration’ requires an actual counting, and not just an estimation of number ... The notion of counting ‘singly,’ ‘separately,’ ‘number by number,’ ‘distinctly,’ which runs through these definitions is incompatible (or at least arguably incompatible, which is all that needs to be established) with gross statistical estimates.”¹⁴

The fact that the debate over the mathematical estimation and statistical adjustment of the Census results has existed since before the first Census was even taken completely disproves the notion that the current debate is simply about a more accurate Census:

The longstanding distinction between an enumeration and an estimate cannot be dismissed as a mere aspiration for accurate results, no matter how derived. Although modern theorists point to the undercount as a flaw in the method of an actual enumeration, the identification of that flaw is hardly a recent epiphany. The Framers’ generation was well aware of the fact that an actual enumeration is inherently incapable of counting those that cannot practicably be counted.

Notwithstanding their awareness of this inherent limitation, the Framers required that representation in Congress be apportioned on the basis of an ‘actual enumeration.’ They did so, moreover, not out of naivete or unfamiliarity with alternative methods of estimation, but to minimize the risk of political manipulation in what they knew would always be a politically charged decision - the apportionment of seats in the U.S. House of Representatives.¹⁵

The distinction was familiar and thoroughly discussed throughout eighteenth century English politics and in fact, the very same words were used in controversies between England and the American colonies. “[T]hose who criticized the use of estimates in calculating population figures demanded instead that an enumeration – an actual count – be taken.”¹⁶

In the run up to the most recent two decennials, 1990 and 2000, the estimation debate raged in notions that would have been familiar to the Founding Fathers, but took

¹³ Andrew Spiropoulos, *Enumeration Clause*, in the HERITAGE GUIDE TO THE CONSTITUTION, *supra* note 10, at 56.

¹⁴ *Department of Commerce v. United States House of Representatives*, 525 U.S. 316, 347 (1999).

¹⁵ Thomas R. Lee, *The Original Understanding of the Census Clause: Statistical Estimates and the Constitutional Requirement of an “Actual Enumeration”*, 77 WASH. L. REV. 1, 62 (2002).

¹⁶ Spiropoulos, *supra* note 12, at 56.

on its current vocabulary in the form of a new question – “Should the Census Bureau head count for 1990 be revised (or, to use the technical word, adjusted) for the first time in 200 years?”¹⁷

The 1990 controversy manifested in a legal challenge brought by mayors of large cities who were concerned that the undercount in urban areas such as metropolitan New York City would result in less representation and less federal aid. “The judge in New York’s lawsuit ordered the Census Bureau to conduct a post-head-count survey to gauge the undercount. Using one of several possible models, the bureau estimated that census counters missed nearly 10 million Americans and double-counted more than 4 million, for a net undercount of about 5.3 million -- more than 2 percent of the total population.”¹⁸

However, further study of this “estimated undercount” raises more questions than could ever possibly be answered. Of the net undercount of 5.3 million,

...1.7 million persons were thought by the Bureau to reflect processing errors in the post enumeration survey [PES], rather than census errors. Later research has shown the 1.7 million to be a serious underestimate. Current estimates range from 3.0 million to 4.2 million, with a central value of 3.6 million. (These figures are all nation-wide, and net.) **Thus, the bulk of the 1990 adjustment resulted from errors not in the census but in the PES.** Processing errors generally inflate estimated undercounts, and subtracting them leaves a corrected adjustment of 1.7 million. Correlation bias, estimated at 3.0 million, works in the opposite direction, and brings the undercount estimate up to the demographic analysis figure of 4.7 million ... The message is simple: on the scale of interest, most of the estimated undercount is noise.¹⁹

In other words, the mechanism created to check the accuracy of the Census is itself inaccurate and flawed.

Again in 2000 the estimation debate raged. The publication of the Bureau’s plan to statistically adjust the Census 2000 results occasioned two separate legal challenges:

The first suit, styled *Clinton v. Glavin* ... was filed on February 12, 1998, in the District Court for the Eastern District of Virginia by four counties ... and residents of 13 States ... who claimed that the Bureau’s planned use of statistical sampling to apportion Representatives among the States violates the Census Act and the Census Clause of the Constitution ... The second challenge was filed by the United States House of Representatives on February 20, 1998, in the District Court for the District of Columbia.²⁰

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Freedman & Wachter, *supra* note 1, at 203.

²⁰ *Department of Commerce v. United States House of Representatives*, 525 U.S. 316, 327-8 (1999).

The District Court ruled in both cases that plaintiffs satisfied the requirements for Article III standing, that the suits were ripe for review, and that the Census Act prohibited the use of the challenged sampling in the apportionment of the U.S. House of Representatives.²¹ The Court also held in the latter case that the suit did not violate separation of powers principles.²² The Court did not rule on the Constitutional issue of “enumeration” versus “estimation.”

Thus, upon the Clinton Administration’s appeal of the District Court’s decision, the U.S. Supreme Court was presented with three questions: “...first, whether the House of Representatives was the proper legal party to challenge the Census Bureau’s proposed use of sampling; second, whether Federal statutes governing the census permit sampling; and finally, whether sampling is constitutional.”²³

In January of 1999, the Supreme Court handed down its decision in *Department of Commerce v. U.S. House of Representatives*, prohibiting the Clinton Administration’s planned use of statistical sampling to adjust the Census 2000 results for the purpose of apportionment of the House of Representatives. The Court’s ruling was rooted in Federal statutory authority, which clearly prohibited statistical adjustment. It is important to note, however, that “...the Court drew a distinction, between the official census figures used to apportion seats in the House of Representatives among the 50 states, and any statistical adjustment of those figures for other purposes like state redistricting and the distribution of Federal money to the states.”²⁴ Thus, by ruling on the basis of Federal law, the Court made no ruling on the Constitutional question of the meaning of “actual enumeration,” and whether that meaning requires actually counting every person and prohibits estimating population. “The four Justices who joined Justice [Sandra Day] O’Connor [Chief Justice William H. Rehnquist and Justices Antonin Scalia, Anthony M. Kennedy, and Clarence Thomas] suggested, however, that sampling would be unconstitutional even if Federal law permitted it; the four dissenters [Justices John Paul Stevens, David H. Souter, Ruth Bader Ginsburg and Stephen G. Breyer] said it posed no constitutional problem. Justice O’Connor herself expressed no view.”²⁵

Justice O’Connor went further in her opinion regarding Federal Census law, explaining that “Congress had always insisted on a head count for apportionment purposes...” And Justice Breyer, even though he joined the dissenting opinion, “...agreed with the majority that sampling could not be a substitute for an actual enumeration...”²⁶

²¹ *Clinton v. Glavin*, 525 U.S. 316 (1999).

²² *United States House of Representatives v. Department of Commerce*, 11 F. Supp. 2d 76 (D.D.C. 1998).

²³ Linda Greenhouse, *High Court To Hear Case On Sampling For Census*, NEW YORK TIMES, Sep. 11, 1998, at A16.

²⁴ Linda Greenhouse, *Jarring Democrats, Court Rules Census Must Be by Actual Count*, NEW YORK TIMES, Jan. 26, 1999, at A1.

²⁵ *Id.*

²⁶ *Id.*

Consequently, of the three questions originally presented, the Supreme Court ruled on only one – that Federal statutes governing the census do not permit sampling. The consensus is clearly that the Constitution requires enumeration over estimation, and further, that Congress has consistently insisted on an actual enumeration. The current situation is tenuous, however, as the Supreme Court, which would most likely rule that estimation is unconstitutional, has yet to so definitively rule. The original fear of partiality or oppression, based on the political manipulation of population figures was a very real threat to the Framers, and still exists to this day.

It is important to note that the ideological 5-4 divide of the *Commerce* Court exists in similar fashion today. However, Justice Breyer’s statement opposing sampling in his dissenting opinion in *Commerce* cannot be discounted when considering the overwhelming consensus that estimation is unconstitutional.

As very clear as it is that the Founders knew exactly what they were doing when they rejected “estimation” in favor of “enumeration,” it is equally very *unclear* that “estimation” could even improve the accuracy of the Census at all. Thus, statistical adjustment has the dubious distinction of being not only unconstitutional, but *unhelpful*:

There were proposals to adjust the census by statistical methods, but this is advisable only if the adjustment gives a truer picture of the population and its geographical distribution. The census turns out to be remarkably good, despite the generally bad press reviews. Statistical adjustment is unlikely to improve the accuracy, because adjustment can easily put in more error than it takes out. Indeed, error rates in the adjustment turn out to be comparable to errors in the census. The data suggest a strong geographical pattern to such errors, even after controlling for demography—which contradicts a basic premise of adjustment. The complex demographic controls built into the adjustment mechanism turn out to be counter-productive.²⁷

Statistical adjustment itself is rife with debate over methodological accuracy. “The problem is that while statisticians can come up with an estimate experts can defend intellectually as more accurate than the head count, at least for the nation as a whole, they can’t come up with an estimate they can defend as definitely more accurate than all other estimates.”²⁸ In fact, while the obvious debate goes on between estimation and enumeration, a more subtle debate rages within estimation itself. That is, what adjustment and method of arriving at the adjustment will be used? Thus, “...in practice, politicians are likely to pick the adjustment that works to the political benefit of their particular state or party.”²⁹ It is now clear that the entire notion of statistically adjusting census data, or choosing “estimation” over “enumeration,” is not only unconstitutional

²⁷ Freedman & Wachter, *supra* note 1, at 197.

²⁸ Michael Barone, *Playing Census Politics*, U.S. NEWS & WORLD REPORT, July 15, 1991, at 31.

²⁹ *Id.*

and unhelpfully inaccurate, it is much too susceptible to the political manipulation the American Founders had the foresight to consider over 200 years and 22 decennials ago.

Moreover, statistical adjustment was repeatedly analyzed and dismissed as inaccurate – or at least inaccurate enough to disqualify its utility in overall Census accuracy. In fact, after the 2000 decennial was analyzed, there was widespread – but not universal – agreement on two chief points:

First, Census 2000 succeeded in reducing differential undercounts from their 1990 levels.

Second, there are serious questions about the accuracy of proposed statistical adjustments. Mistakes in statistical adjustments are nothing new. Studies of the 1980 and 1990 data have quantified, at least to some degree, the three main kinds of error: processing error, correlation bias, and heterogeneity. In the face of these errors, it is hard for adjustment to improve on the accuracy of census numbers for states, counties, legislative districts, and smaller areas. Statistical adjustment can easily put in more error than it takes out, because the census is already very accurate.³⁰

Furthermore, after the 2000 decennial, on the advice of the non-partisan career employees of the Census Bureau, the Secretary of Commerce decided not to use adjusted Census data for any reason whatsoever, due to further analysis that led to the conclusion that the adjustments were inaccurate and thus inappropriate for use. The Bureau twice recommended that adjustment be dismissed:

In March 2001, the Secretary of Commerce—on the advice of the Census Bureau—decided to certify the census counts rather than the adjusted counts for use in redistricting (drawing congressional districts within state). The principal reason was that, according to demographic analysis, the census had overcounted the population by perhaps 2 million people. Proposed adjustments would have added another 3 million people, making the overcounts even worse. Thus, demographic analysis and ACE pointed in opposite directions.

In October 2001, the Bureau decided not to adjust the census as a base for post-censal population estimates. This sounds even drier than redistricting, but \$200 billion a year of tax money are allocated using such estimates. The decision was made after further analysis of the data, carried out between March and October. The Bureau added 2.2 million to the demographic analysis; and processing error in ACE went from 2 million to 5–6 million. Moreover, the Bureau confirmed that gross errors in ACE were well above 10 million, with another 15 million cases whose status remains to be resolved. Any way you slice it, a large part of the

³⁰ Freedman & Wachter, *supra* note 1, at 203

adjustment comes about not because of errors in the census, but because of errors in the adjustment process itself.³¹

The aforementioned accuracy and success of the Census lies not within statistically adjusting and estimating Census Data within the locked confines of the Census Bureau, but within the Bureau's efforts to count every single person in the U.S. on Census Day 2010, regardless of difficulty. In fact, the Bureau has explicitly stated that it fully intends to fulfill its Constitutional mandate of an actual enumeration and has no plans for estimates in the 2010 decennial. Additionally, the Government Accountability Office (GAO) professionals working on Census issues believe it is simply "too late" for the Census Bureau to statistically adjust the 2010 Census data and therefore not logistically practical.³² As confirmed by the Bureau, statistical sampling is "...not in our plans."³³ "Our goal for the 2010 census is to count everyone, no matter how difficult or challenging the task may be," said Thomas Mesenbourg, acting census director.³⁴

"It is time to move on."³⁵

It is quite clear that statistical adjustment is not the answer to any Census-related questions. In fact, statistical adjustment begs many more questions than the process could ever answer for anyone involved in the business of counting each and every person in the U.S. once, only once and in the right place on Census Day. This was true on Census Day 1790 and remains true for Census Day 2010.

Given the decades of effort spent in developing post enumeration surveys for census adjustment, the decision not to adjust must have been a wrenching one for the Bureau. We are confident they made the right decision. Statistical adjustments were considered in 1980, twice in 1990, and again in 2000. These adjustments could not improve the accuracy of the census. The adjustment technology does not work well enough to use. It is time to move on.³⁶

³¹ *Id.* at 208.

³² *GAO Briefing to House Oversight and Government Reform Committee Minority Staff*, March 11, 2009, 11am.

³³ *Census 2010: Assessing the Bureau's Strategy for Reducing the Undercount of Hard-to-Count Populations: Hearing Before the H. Comm. On Oversight and Government Reform*, 111th Cong. (2009) (statement of Thomas Mesenbourg, Acting Director, U.S. Census Bureau).

³⁴ *Worries about Missing Millions in Census*, *NEWSDAY*, March 24, 2009, at A38.

³⁵ *Freedman & Wachter*, *supra* note 1, at 219.

³⁶ *Id.*

V. REAPPORTIONMENT BATTLES

Because the Census results are the basis of political representation, via the reapportionment of seats in the House of Representatives and the makeup of district boundaries, the history of the Census is fraught with post-census reapportionment battles as well. It is important to take note of a few of these past events and battles to truly understand the necessity for an inherently apolitical enumeration.

One such event occurred after the 1910 Census and gave rise to an even greater need for a non-partisan and apolitical enumeration of the people in the U.S. on Census Day:

In 1911, when Congress fixed the number of representatives at 435—1 per state with the rest apportioned—the census results had even greater significance. Before this decision, a state's loss of population, and therefore of representation, was mitigated by continuing increases in the total number of representatives. Before the change, states whose population declined relative to other states did not often lose representatives, although their representatives were relatively less powerful as members of a now larger House. But after 1911, a gain of representation for any one state came only with a loss of representation for another state.³⁷

A major battle over reapportionment also ensued after the 1920 Census. And in fact, reapportionment did not even take place that particular decennial due to arguments over the division of political power:

Congress failed to reapportion following the 1920 Census. The failure was in part the result of a difference of opinion over the method of dividing political power. Throughout the 1920s, Congress debated which of two mathematical models for reapportionment—whose outcomes for distribution of House seats differed—would be used. In 1929, one mathematical method was selected for the reapportionment, but it was not applied until after the 1930 Census. Furthermore, the debate about apportionment methods was not over. In 1941, a different model was chosen called “the method of equal proportions.” It is still in use today.

The failure to reapportion in 1920 was also a reflection of regional power dynamics. The results of the 1920 Census revealed a major and continuing shift in population from rural to urban areas, which meant that many representatives elected from rural districts resisted reapportionment. Also, the growing number of immigrants entering this country had some impact on population shifts. Delay followed delay as rural interests tried to come

³⁷ Decennial Census: Overview of Historical Census Issues, GAO REPORT GAO/GGD-98-103 at 10, 111 (1998).

up with mechanisms that would reduce the impact of the population shift. Congressmen from rural areas that would lose seats to more urbanized areas simply blocked passage of reapportionment legislation for 9 years.³⁸

These events and battles that occur during the reapportionment phase of the ten year life cycle of a census demonstrate that the prior phase, the enumerating of the people, absolutely must be non-partisan and apolitical. Because political representation in this country is based upon Census numbers, the results of any decennial must be fair, accurate and trustworthy.

³⁸ *Id.*

VI. 2010: THE GHOST OF CENSUS PAST

There is still much to be done within the Census Bureau as Census Day 2010 quickly approaches. As with every other decennial, the conduct of the 2010 census has already been challenged with politically-induced trials.

The vast amount of work to be done to produce a complete actual enumeration was begun long ago and is ongoing. Currently and throughout spring 2009, census field workers are conducting address canvassing nationwide to update census maps and addresses. As fall 2009 approaches, the Bureau will begin recruiting the enumerators needed for the peak census workload during summer 2010. The Census Bureau plans to hire and train more than one million people across the country.³⁹ In February through March 2010 all U.S. households will begin receiving census questionnaires, and, of course, April 1, 2010 is Census Day. From April through July 2010 the temporarily hired enumerators will be in the field conducting Non-Response Follow-up. By December 31, 2010, the official reapportionment numbers must be delivered to the President and the redistricting data is due to the states by March 31, 2011.

The 2010 Decennial has run into plenty of logistical hurdles to date, making the Bureau's task that much more difficult – so much so, in fact, that GAO has placed the 2010 Census on its “high-risk list.” “The bureau faces such extreme budget, staff and organizational problems that the Government Accountability Office has dubbed the 2010 census a ‘high-risk’ area vulnerable to failure.”⁴⁰

A major factor in the 2010 Decennial's logistical problems and addition to the high-risk list was a technological blunder that occurred when “...the bureau also wasted more than \$1 billion testing a handheld computer for enumerators to capture data from households that have not responded to the mailed form. It has gone back to pencil and paper.”⁴¹ The GAO further described the Bureau's problems: “[d]ue in part to problems rolling out new handheld computer technology, [the GAO] noted, the Census Bureau is behind in field testing and can't answer basic questions such as how it will handle a controversial employee fingerprinting policy -- or how much the 2010 enumeration will actually cost. (Estimates range from \$14 billion to \$15 billion, a record for the agency.)”⁴²

However, the Bureau has improved its operations for the 2010 decennial, compared with past efforts. “The Census Bureau has taken steps since 2000 to become more user-friendly. For instance, it adopted a short-form questionnaire for next year containing just [ten] questions.”⁴³ And furthermore, at a hearing of the House Oversight

³⁹ Malcomb Daniels, *Jeffco Census Office Opens*, BIRMINGHAM NEWS, March 16, 2009, at 1A.

⁴⁰ Eliza Newlin Carney, *Countdown To Census Disaster*, THE NATIONAL JOURNAL, March 23, 2009.

⁴¹ Don Campbell, Editorial, *Census as Science; Count Must not Become a Washington Numbers Game*, USA TODAY, March 4, 2009, at 10A.

⁴² Carney, *supra* note 43.

⁴³ Campbell, *supra* note 44.

and Government Reform Information Policy, Census and National Archives Subcommittee, Tom Mesenbourg, the acting Census Director testified that "...the Census Bureau is on solid ground as the 2010 Census begins. We believe that our current plan has significantly reduced the risk to the 2010 Census, and we are poised to meet the enormous challenges in front of us. Members of the Sub-Committee, the Census Bureau is on track for a successful Census."⁴⁴ During questioning by Members of the Subcommittee, Mr. Mesenbourg went on to explain that the Bureau has the talent and expertise currently in place to execute a successful 2010 Census. "I believe we have the talent to keep the train moving down the track," he said.⁴⁵

In fact, the most difficult challenge was politically motivated and arose neither from within the Bureau nor from the Legislature, but was thrown at the Census Bureau by the Executive Branch of government. A major factor in the success of every prior decennial dating back to 1790 is the independent nature of the Census Bureau. The Bureau is lead by a Presidentially-appointed and Senate-confirmed Director. Historically, the Census Bureau has operated in an ardently independent manner. Wholly parked within the Department of Commerce, the Bureau operates independently, going about the business of counting everyone in the United States on Census Day. Technically, within the organizational structure of the Department of Commerce, the Bureau Director reports to the Undersecretary of Economic Analysis, who reports to the Secretary of Commerce. Historically, other than status and funding updates, reports or briefings, the President has little direct contact with the Bureau throughout the decennial life cycle.

The historical independence of the Bureau was recently tested due to President Barack Obama's machinations in the early days of his Administration. Media outlets began reporting that President Obama was going to cut out the Bureau's superiors at the Department of Commerce and have the Director report directly to the President in the West Wing, specifically to Chief of Staff Rahm Emanuel.⁴⁶ This plan raised concern that politics would seep into the Census Bureau's work, jeopardizing the independence the Bureau needs to carry out its Constitutional duty and produce a fair, accurate and trustworthy Census. Later news reports demonstrated that the President was walking back from his original plans, but have not fully quelled fears over the politicization of the Census Bureau.⁴⁷

⁴⁴ *Status of 2010 Census Operations: Hearing Before the H. Comm. On Oversight and Government Reform, Subcommittee on Information Policy, Census and National Archives*, 111th Cong. (2009) (statement of Thomas Mesenbourg, Acting Director, U.S. Census Bureau).

⁴⁵ *Id.*

⁴⁶ See, e.g., Jonathan Allen, *Administration Plans to Bypass Commerce – and Gregg – on 2010 Census*, CONGRESSIONAL QUARTERLY TODAY ONLINE NEWS, Feb. 5, 2009, <http://www.cqpolitics.com/wmspage.cfm?docid=news-000003024858>, and Hope Yen, *Census Bureau Said Behind Schedule for 2010 Count*, ASSOCIATED PRESS, March 5, 2009.

⁴⁷ See, e.g., Jonathan Allen, *White House: Census Director to 'Work Closely' with West Wing*, CONGRESSIONAL QUARTERLY TODAY ONLINE NEWS, Feb. 5, 2009, <http://www.cqpolitics.com/wmspage.cfm?parm1=2&docID=news-000003025792>, and Keith Koffler, *Census Control Clarified*, ROLL CALL, March 11, 2009, at 1, 22.

Dr. Larry J. Sabato, director of the University of Virginia Center for Politics and Robert Kent Gooch Professor of Politics at UVA summed up the White House's political machinations:

Sabato said moving the census "in-house" will likely set up a situation where neither the Commerce Department nor the White House will know exactly what is going on in the Census Bureau. He said the process is "too critical to politics for both parties not to pay close attention ...

"I've always remembered what Joseph Stalin said: 'Those who cast the votes decide nothing. Those who count the votes decide everything.' The same principle applies to the census. Since one or the other party will always be in power at the time of the census, it is vital that the out-of-power party at least be able to observe the process to make sure it isn't being stacked in favor of the party in power. This will be difficult for the GOP since I suspect Democrats will control both houses of Congress for the entire Obama first term," Sabato said.

"The last thing the census needs is for any hard-bitten partisan (either a Karl Rove or a Rahm Emanuel) to manipulate these critical numbers. Many federal funding formulas depend on them, as well as the whole fabric of federal and state representation. Partisans have a natural impulse to tilt the playing field in their favor, and this has to be resisted," Larry Sabato, the director of the Center for Politics at the University of Virginia, told FOX News in an e-mail.⁴⁸

Moreover, the GAO "...told a House Oversight and Government Reform subcommittee that census directors in previous administrations often had discussions with the White House about their work and 'that's not necessarily a bad thing.' But ... the input had its limits. 'You don't want White House involvement on the science,' [the GAO] said."⁴⁹

⁴⁸ Bill Sammon and Shannon Bream, *GOP Sounds Alarm Over Obama Decision to Move Census to White House*, FOXNEWS.COM, Feb. 9, 2009, <http://www.foxnews.com/politics/first100days/2009/02/09/gop-sounds-alarm-obama-decision-census-white-house/>.

⁴⁹ Yen, *supra* note 49.

VII. CONCLUSION: THE CENSUS IS INDEPENDENCE

When it comes to the Census, history demonstrates that political gamesmanship has always been the losing proposition. Dating from before the founding of the United States through the present, there have been Census debates over everything from Constitutional issues and types of “estimation” to reapportionment. In each and every debate, however, the politics of interference and manipulation lose out to independence. Every 10 years, political interference threatens a fair and accurate Census. And every 10 years, political interference loses out to an apolitical Census Bureau and a fair and accurate decennial. The 2010 decennial is no different, and as time runs out and April 1, 2010 fast approaches, political interference must and will lose out again.

About the Committee

The Committee on Oversight and Government Reform is the main investigative committee in the U.S. House of Representatives. It has authority to investigate the subjects within the Committee's legislative jurisdiction as well as "any matter" within the jurisdiction of the other standing House Committees. The Committee's mandate is to investigate and expose waste, fraud and abuse.

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