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16 UNITED STATES DISTRICT COURT
17 CENTRAL DISTRICT OF CALIFORNIA

18 HENRY A. WAXMAN, WILLIAM LACY CLAY,
19 TOM LANTOS, MAJOR R. OWENS, EDOLPHUS TOWNS,
20 PATSY T. MINK, BERNARD SANDERS, CAROLYN B.
21 MALONEY, ELEANOR HOLMES NORTON, ELIJAH E.
22 CUMMINGS, DENNIS J. KUCINICH, ROD R.
23 BLAGOJEVICH, DANNY K. DAVIS, JOHN F. TIERNEY,
24 THOMAS H. ALLEN, JANICE D. SCHAKOWSKY,
25 Members of the United States Congress, Committee
26 on Government Reform

27 House of Representatives
28 Committee on Government Reform
B-350A Rayburn House Office Building
Washington, DC 20515-6143

Plaintiffs,

v.

DONALD L. EVANS, Secretary of Commerce,
Fourteenth Street and Constitution Avenue, NW
Washington, DC 20230,

Defendant.

Civil Action No.

LGB

01 - 04530 (AJWx)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is an action by 16 members of the House Committee on Government Reform of

COMPLAINT.

1 the Congress of the United States to enforce their right under 5 U.S.C. § 2954 to obtain certain
2 information from the United States Department of Commerce relating to the 2000 Decennial
3 Census. On April 6, 2001, the plaintiffs transmitted by telecopier and by mail a letter to
4 defendant invoking section 2954 and requesting immediate access to the adjusted census data
5 produced as part of the 2000 Decennial Census. To date, plaintiffs have received no response to
6 their request. The defendant's failure to comply in a timely fashion with plaintiffs' request
7 violates section 2954, which provides that "[a]n Executive agency, on request of the Committee
8 on Government Operations of the House of Representatives, or of any seven members thereof . . .
9 shall submit any information requested of it relating to any matter within the jurisdiction of the
10 committee." (Emphasis added). Defendant's failure to comply with plaintiffs' request also
11 violates the Administrative Procedure Act, which empowers this Court to "compel agency action
12 unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1). Plaintiffs seek declaratory
13 and injunctive relief directing the defendant Secretary of Commerce to carry out forthwith his
14 mandatory duty under section 2954.

15 **Jurisdiction.**

16 2. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1361.

17 **Parties.**

18 3. Plaintiff Henry A. Waxman is a duly elected member of Congress from California and
19 is the ranking minority member of the House Committee on Government Reform, the successor
20 Committee to the House Committee on Government Operations. *See References in Law to*
21 *Committees and Officers of the House of Representatives*, Pub.L. 104-14, § 1(6), 109 Stat. 186
22 (1995). Plaintiff William Lacy Clay is a duly elected member of Congress and is the ranking
23 minority member of the Subcommittee on the Census, House Committee on Government
24 Reform. Plaintiffs Tom Lantos, Major R. Owens, Edolphus Towns, Patsy T. Mink, Bernard
25 Sanders, Carolyn B. Maloney, Eleanor Holmes Norton, Elijah E. Cummings, Dennis J. Kucinich,
26 Rod R. Blagojevich, Danny K. Davis, John F. Tierney, Thomas H. Allen and Janice D.
27 Schakowsky
28 are duly elected members of Congress and are members of the House Committee on Government

1 Reform. Plaintiffs bring this action to compel the submission of information relating to matters
2 within the jurisdiction of the House Committee on Government Reform.

3 4. Defendant Donald L. Evans is the Secretary of Commerce and is sued in his official
4 capacity. Defendant Evans is responsible for administering the decennial census, 13 U.S.C.
5 § 141(a), and has possession and control of the information requested by plaintiffs. Defendant
6 Evans also oversees the Bureau of the Census, an agency within the Department of Commerce,
7 which has been delegated certain responsibilities in connection with the decennial census.

8 **Factual Background.**

9 5. The United States Constitution requires that an “actual Enumeration” or census of the
10 population be conducted every ten years and vests Congress with the authority to conduct the
11 census in “such a manner as they shall by Law direct.” U.S. Const., Art. I, § 2, cl.3.

12 6. The Constitution provides that the results of the decennial census shall be used to
13 apportion the members of the House of Representatives among the States. U.S. Const., Art. I, §
14 2, cl. 3.

15 7. Census data also have important uses not set forth in the Constitution. The federal
16 government considers census data in dispensing funds and other benefits through federal
17 programs, and the states use the results in drawing intrastate political districts.

18 8. Through the Census Act, 13 U.S.C. § 1 *et seq.*, Congress has delegated to the
19 Secretary of Commerce the responsibility to take “a decennial census of [the] population . . . in
20 such a form and content as he may determine . . .” *Id.* § 141(a). The Act specifies that the
21 census shall count population “as of the first day of April of such year, which date shall be
22 known as the ‘decennial census’ date.” *Id.* The Secretary has delegated certain responsibilities
23 under the Census Act to the Bureau of the Census and its head, the Director of the Census.

24 9. As part of its work on the 2000 Decennial Census, the Bureau of the Census compiled
25 two sets of data.

26 a. One set of data is a population count determined through the use of census
27 forms returned by mail and interviews conducted at addresses for which no census form was
28 returned (hereinafter referred to as the “raw” data).

1 b. Recognizing that the raw population count determined as set forth in ¶9a is not
2 entirely accurate, the Bureau of the Census prepared a second set of data adjusting the population
3 count by using well known statistical techniques designed to correct for errors in the census
4 count (hereinafter the “adjusted” data).

5 10. The Department of Commerce has released the raw data, *see* 13 U.S.C. § 141(a) and
6 (b).

7 11. On or about March 6, 2001, the Department of Commerce announced it would not
8 use or release the adjusted data.

9 12. The Census Act requires that the defendant release data to the public and transmit to
10 the states for the purpose of redistricting within “one year of the decennial census date,” or by
11 April 1, 2001. 13 U.S.C. § 141(c).

12 13. Substantial questions have been raised about the accuracy of the raw 2000 census
13 data that the defendant has released; according to experts at the Bureau of the Census, the raw
14 data missed at least 6.4 million people and counted 3.1 million people twice.

15 14. The Census Bureau’s Executive Steering Committee for Accuracy and Coverage
16 Evaluation Policy reported on March 1, 2001, that the majority of evidence indicates that the
17 adjusted data is more accurate than the raw data. 66 Fed. Reg. 14005-06 (2001). Although the
18 Steering Committee concluded that the adjusted numbers should not be released at that time for
19 redistricting purposes, it reached this decision only because the impending April 1, 2001
20 statutory deadline imposed by 13 U.S.C.
21 § 141(c) prevented a full analysis of the adjusted data. The Steering Committee observed that
22 “quality measures indicate that the adjusted data are more accurate overall” and that “the
23 majority of the evidence . . . indicates the superior accuracy of the adjusted data.” 66 Fed. Reg.
24 14005-06.

25 15. By letter dated and transmitted to defendant on April 6, 2001, the plaintiffs requested
26 “expeditious[]” access to “the adjusted data that the Census Bureau has already compiled” but
27 that the defendant has “decided not to release.” The letter specifically invokes the “Seven
28 Member Rule” set forth in 5 U.S.C. § 2954. That provision entitles “the Committee on

1 Government Operations of the House of Representatives [now the Committee on Government
2 Reform], or . . . any seven members thereof,” to request information “relating to any matter
3 within the jurisdiction of the committee,” from any executive agency. *Id.*

4 16. The letter explains that the House Committee on Government Reform has both
5 legislative and oversight jurisdiction over matters relating to population and demography,
6 including the census.

7 a. As to legislative matters within the Committee’s jurisdiction relating to the
8 census, the letter explains that the plaintiffs “are actively considering whether to amend the law
9 [i.e., the Census Act] regarding the timing and release of adjusted and unadjusted census data.
10 Concerns have been raised that the existing provisions of the Census Act effectively prevent the
11 most accurate data from being used for redistricting and other purposes. Review of the adjusted
12 census data will enable us to evaluate the need for legislation in this area.”

13 b. As to the Committee’s oversight function, the letter explains that “this
14 information could have an enormous impact on the allocation by Congress on more than \$185
15 billion in population-based federal grant funds.”

16 c. The letter also explains that the information has a direct bearing on the
17 Committee’s legislative and oversight responsibility with regard to redistricting. The letter notes
18 that the “this information could have a significant bearing on the appropriateness of the
19 congressional redistricting efforts currently being undertaken by state governments. The reports
20 that the Census Bureau missed 6.4 million people in its most recent count raise serious questions
21 about whether all of our citizens will have an equal voice in government. *** [W]e need to
22 investigate these important questions, and if need be, develop legislation that assures fairness in
23 the redistricting process.”

24 17. To date, the defendant has not provided the plaintiffs with the requested information.

25 **Claim For Relief.**

26 18. Section 2954 of Title V imposes a mandatory, non-delegable duty on the defendant to
27 provide information to the Committee, or any seven members thereof, upon request. By failing
28 to provide the requested information, the defendant has violated his duty under the law. By

1 “fail[ing] to act” in a timely fashion and provide plaintiffs the requested information, the
2 defendant has also violated the Administrative Procedure Act, which empowers this Court to
3 “compel agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. §§ 551(13),
4 706(1).

5 19. Defendant’s failure to obey the dictates of 5 U.S.C. § 2954 and the Administrative
6 Procedure Act has deprived the plaintiffs of important information to which they are entitled by
7 law, and thereby caused and will continue to cause the plaintiffs serious, irreparable injury. As a
8 result of defendant’s failure to provide the requested information in a timely fashion, plaintiffs
9 are harmed in many ways, including, but not limited to, in their ability to assess the wisdom of
10 possible amendments to the Census Act, in their ability to engage in meaningful oversight of the
11 allocation of benefits in population-based federal grant programs, and in their ability to develop
12 legislation that assures fairness in redistricting.

13 WHEREFORE, plaintiffs respectfully request that the Court enter an order:

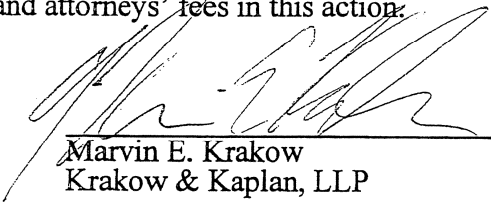
14 (A) Declaring that the failure of the defendant to provide in a timely manner the adjusted
15 2000 census data requested by more than seven members of the House Committee on
16 Government Reform violates 5 U.S.C. § 2954 and the Administrative Procedure Act;

17 (B) Directing the defendant to submit the requested adjusted 2000 census data to the
18 plaintiffs forthwith;

19 (C) Granting the plaintiffs such other and further relief as the Court deems just and
20 proper; and

21 (D) Awarding the plaintiffs their costs and attorneys’ fees in this action.

22
23 Dated: May 18, 2001



Marvin E. Krakow
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Attorneys for Plaintiffs