SUPREME COURT OF THE UNITED STATES

Nos. 94–1614, 94–1631 AND 94–1985

94–1614 WISCONSIN, PETITIONER
v.
CITY OF NEW YORK ET AL.

94–1631 OKLAHOMA, PETITIONER
v.
CITY OF NEW YORK ET AL.

94–1985 DEPARTMENT OF COMMERCE, ET AL., PETITIONERS
v.
CITY OF NEW YORK ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[March 20, 1996]

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

In conducting the 1990 United States Census, the Secretary of Commerce decided not to use a particular statistical adjustment that had been designed to correct an undercount in the initial enumeration. The Court of Appeals for the Second Circuit held that the Secretary's decision was subject to heightened scrutiny because of its effect on the right of individual respondents to have their vote counted equally. We hold that the Secretary's decision was not subject to heightened scrutiny, and that it conformed to applicable constitutional and statutory provisions.

I

The Constitution requires an "actual Enumeration" of

Federal Government considers census data in dispensing funds through federal programs to the States, and the States use the results in drawing intrastate political districts.

There have been 20 decennial censuses in the history of the United States. Although each was designed with the goal of accomplishing an "actual Enumeration" of the population, no census is recognized as having been wholly successful in achieving that goal.[2] Cf. *Karcher* v. *Daggett*, 462 U. S. 725, 732 (1983) (recognizing that "census data are not perfect," and that "population counts for particular localities are outdated long before they are completed"); *Gaffney* v. *Cummings*, 412 U. S. 735, 745 (1973) (census data "are inherently less than absolutely accurate"). Despite consistent efforts to improve the quality of the count, errors persist. Persons who should have been counted are not counted at all or are counted at the wrong location; persons who should not have been counted (whether because they died before or were born after the decennial census date, because they were not a citizen of the country, or because they did not exist) are counted; and persons who should have been counted only once are counted twice. It is thought that these errors have resulted in a net "undercount" of the actual American population in every decennial census. In 1970, for instance, the Census Bureau concluded that the census results were 2.7% lower than the actual population.[3] Brief for Respondents 12.

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[2]Indeed, even the first census did not escape criticism. Thomas Jefferson, who oversaw the conduct of that census in 1790 as Secretary of State, was confident that it had significantly undercounted the young Nation's population. See C. Wright, History and Growth of the United States Census 16–17 (1900).

[3]One might wonder how the Census Bureau is able to determine whether there is an undercount and its size. Specifically: against what standard are the census results measured? After all, if the *actual* population of the United States is known, then the conduct of the census

Report to the Secretary of Commerce
by
V. Lance Tarrance, Jr.

After a year and a half of considering the question of whether or not the enumeration totals from the decennial census should be changed, I have come to the conclusion that the 1990 Census counts should not be altered. What follows includes an overall view of the background of the controversy and the important issues, particularly the public policy aspects, as well as my comments on the individual guidelines. I have chosen to concentrate on the public policy implications, not only because that is my area of expertise but also because I am convinced that the impact of changes to the enumeration totals on the operations of our government--at the federal, state and local levels--would be disastrous.

In the several decades since the Bureau of the Census developed statistical techniques to estimate the number of persons not counted in the actual decennial census, and to its credit announced its estimate of how many persons were missed, the perception has grown that if the Census Bureau could estimate how many persons had been missed, then surely it should be an easy task to "correct" the actual counts. Even though Census Bureau statisticians each decade released a fairly widespread range of possibilities, and stated clearly that even their "preferred set" was not usable at any level below the state and national totals, special interest group pressures have intensified to "synthethically correct" the numbers. Intense disagreement among statisticians and other experts has surrounded this issue from its inception, with no clear consensus rising from the mist of either research or rhetoric. It is important also to note that, in spite of all

more than just a scientific statistical improvement of an imperfect government program. Alarmingly, in recent months the voices of those who urged caution or alternate courses of action have seldom been heard; too often, their opinions have been summarily dismissed, as often happens when special interests push for shortsighted gains that jeopardize national interests. Lost in the discussions on this subject, particularly in the media, are the following points which seem to me to be of decisive importance:

1. The entire proposed adjustment process is an incredibly complex and intricate statistical construction, which has neither precedent nor verification. It employs unproven techniques that are understood only by professional statisticians; the accuracy or inaccuracy of the conclusions to be drawn, either from the process itself or the evaluative research done in connection with it, rest, in the end, on judgment rather than scientific fact.
2. Most sampling experts agree that synthetic estimates at levels below state totals will never be more "accurate" than census counts. Indeed, there will be, in a statistical sense, "fictional persons" added to blocks chosen by computers on the basis of esoteric assumptions.
3. The increasing pressures for adjustment have forced an incompletely researched or tested statistical operation to produce less than reliable numbers. The arbitrary deadline of July 15 for the decision has not allowed ample time for analysis and verification of the process or its products.

4. Two sets of numbers will jeopardize the redistricting efforts necessary for the 1992 elections because even carefully crafted efforts will land redistricting plans in court, adding greatly to the difficulties state officials have in accomplishing the drawing of new districts in time for the 1992 elections. Changes in the reapportionment of the Congress that may be the result of adjusted state totals are sure to create bitter controversy at the national level. The result may well be chaos for the 1992 elections.
5. Effects on the public perception of the decennial census will further erode already-fragile trust in the pledge of confidentiality and in the need to cooperate. (A Gallup nationwide poll taken in March of 1990 revealed that only 23% of Americans felt "very confident" that their personal census documents were kept confidential[1].)
6. Future Congresses and high officials may find it both easy and expedient to deny essential resources and pre-enumeration publicity support to census activities in the belief that "adjustment will take care of all the problems."
7. To accept the adjustment process as an adjunct to the decennial census on a permanent basis would be inviting "inside manipulation" of the numbers for political purposes.

An understanding of these arguments is critical to any decision on adjustment. To ignore these objections on the premise that the adjustment

[1]Gallup Poll, March, 15-18, 1990, Gallup Poll News Service, Vol 54, No. 43

UNITED STATES DEPARTMENT OF COMMERCE
Bureau of the Census

Date: March 21, 1996

To: Lance Tarrance

From: C. V. St. Lawrence
Associate Director for Administration

You came immediately to mind on Tuesday when I learned of the Supreme Court decision regarding the 1990 Census. Here is a copy of that decision.

As you may recall, the stipulation that created the Special Advisory Panel provided that the Panel would continue until both parties agreed that it was no longer necessary. The parties never agreed on this issue. However, I am led to believe that this Supreme Court decision has the effect of closing out the Panel's activities.

My personal thanks to you for the wonderful learning experience I had in working with you and other Panel members. I know that Secretary Mosbacher very much appreciated your willingness to serve on the Panel. Were he still Secretary, he likely would have called one more meeting--just to say "thanks."

Regards.

Attachment

TRANSMITTAL FORM CD-82A (8-75)
PRESCRIBED BY DAO 214-2