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PRESS RELEASE

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Redistricting Is An Apportionment Purpose: The Census Case

The Supreme Court Opinion on Sampling is not Limited, but Broad, in Scope

The spin provided by those who wish to memorialize the 1990 Census as the last Census in our nation's history, including the Clinton Administration, views the opinion of the recent Supreme Court decision in an historical vacuum. A careful reading of the Supreme Court's opinion is that the Census Sampling Case[1] was a very *broad* decision that prohibits the use of sampling in apportionment AND redistricting.

Even though practitioners now know apportionment and districting as two discrete steps, they are all part of the same overall process addressing equality of voting strength in elections. The Court affirmed that the statute means sampling can not be used for the "purposes of apportionment".

It is abundantly clear that the term "apportionment" has been used in a broad, inclusive sense since, at least, the 1957 legislation that first prohibited the use of sampling for apportionment purposes. Notwithstanding the current understanding of the term by redistricting practitioners, apportionment was used by Justice O'Connor as being inclusive throughout the Court's opinion. Two very clear examples follow.

The court granted standing based not solely upon the allocation of seats among states but also to plaintiffs who challenged the Bureau's plan as violative of their voting strength. The Court found that "this expected intrastate vote dilution satisfies the injury-in-fact, causation, and redressibility requirements." (Slip at p.16). In addition, where Justice O'Connor addresses the legislative history of the Census Act, she mentions the "shifting the number of seats apportioned to some states and altering district lines in many others." (Slip at p.25). The Court's further discussion of cases also

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[1] *U.S. Dept. of Commerce v. U.S. House of Representatives & Clinton v. Glavin, 98-404 and 98-564. The link to the Cornell Legal Information Institute site can be found at http://www.polidata.org/news.htm.*

address the districting part of the apportionment process, notably Baker v. Carr and Karcher v. Daggett, both cases involving districting plans, not allocation of seats among states.

Any discussion of the "non-apportionment purposes" of the Census Act relate to the census as a "linchpin of the federal statistical system", not to its use for redistricting. The Court clearly prohibited the use of sampling for apportionment purposes. Apportionment without districting is an incomplete process. Redistricting is clearly an apportionment purpose.

The response from the proponents of the Clinton initiative was that the decision was a narrow one that only applies to the state-level apportionment, the initial allocation of seats. They reason that sampling *must* be used for districting. However, this fails the rationality test.

Sampling, if it can ever increase the "accuracy" of the census at any level, is valid at the highest levels only, at the national and arguably at the state level. The Bureau's own data indicate that the degree of accuracy drops significantly at the level at which districting is accomplished, the census block. It would be irrational for a legislative body to *prohibit* sampling for state-level allocation where it's level of accuracy would be arguably higher and to *allow* sampling at the block-level districting where it's ability to increase the level of accuracy would be hugely variable and questionable.

The Court's discussion provides nothing inconsistent with its analysis that the proposed uses of sampling are prohibited for purposes (emphasis added) of apportionment, not strictly the state-level ministerial act of dividing up the seats amongst the states. The use of the plural form of the word gives credence to this inclusive understanding.

In reality, what the Court said was that the Clinton Administration's proposal for "accounting for", rather than counting, our population can not be used for *all* apportionment *purposes (emphasis added)*. Districting is an apportionment purpose and therefore, sampling can not be used for districting.

For a state to assume that redistricting is a "non-apportionment" purpose for which sampled data could/should be used might prove to be a significant problem in a state's legal strategy. For the Secretary of Commerce to assume it is even feasible to conduct two census operations is highly questionable given the progress to date and the requirement to now undertake a good-faith effort at a *100%* traditional census.

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