Duncan	Klug	Royce
Edwards	Kucinich	Ryun
Emerson	LaHood	Salmon
English	Lampson	Sanchez
Ensign	Largent	Sanders
Etheridge	Lazio	Sandlin
Evans	Lewis (GA)	Sanford
Everett	Lewis (KY)	Sawyer
Forbes	LoBiondo	Scarborough
Ford	Lofgren	Schaefer, Dan
Fox	Lowey	Schaffer, Bob
Franks (NJ)	Lucas	Schumer
Gejdenson	Luther	Sensenbrenner
Gekas	Maloney (CT)	Sessions
Gephardt	Manzullo	Shadegg
Gibbons	Mascara	Shays
Gillmor	McCarthy (MO)	Sherman
Goode	McGovern	Shimkus
Goodlatte	McIntyre	Slaughter
Goodling	McKinney	Smith (MI)
Gordon	Menendez	Smith, Adam
Goss	Metcalf	Smith, Linda
Graham	Mica	Snowbarger
Granger	Minge	Snyder
Gutierrez	Moran (KS)	Souder
Gutknecht	Myrick	Spratt
Hall (TX)	Neumann	Stabenow
Hamilton	Northup	Stearns
Hayworth	Norwood	Stenholm
Hefley	Nussle	Strickland
Herger	Pappas	Stump
Hill	Pascrell	Sununu
Hilleary	Paul	Talent
Holden	Pease	Tauscher
Hooley	Peterson (MN)	Taylor (MS)
Hostettler	Peterson (PA)	Thornberry
Hulshof	Petri	Thune
Hutchinson	Pitts	Thurman
Inglis	Pombo	Tiahrt
Istook	Pomeroy	Tierney
Jenkins	Poshard	Traficant
John	Price (NC)	Turner
Johnson (CT)	Radanovich	Velazquez
Johnson (WI)	Ramstad	Visclosky
Jones	Reyes	Walsh
Kaptur	Riggs	Wamp
Kasich	Riley	Watkins
Kelly	Rivers	Watts (OK)
Kennedy (RI)	Rodriguez	Weller
Kennelly	Roemer	Weygand
Kildee	Rogan	White
Kim	Rohrabacher	Whitfield
Kind (WI)	Rothman	Wise

NOT VOTING—7

Gonzalez	Maloney (NY)	Young (FL)
Hinchey	Pastor	
Hinojosa	Schiff	

☐ 1750

Messrs. SHAYS, COOK, and Mr. BARTLETT of Maryland changed their vote from ''yea'' to ''nay.''

Messrs. BONO, MCINTOSH, and BONILLA changed their vote from ''nay'' to ''yea.''

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid upon the table.

PERSONAL EXPLANATION

Mr. PASTOR. Mr. Speaker, during rollcall vote No. 474 on H.R. 2378 I was unavoidably detained. Had I been present, I would have voted ''aye.''

PERSONAL EXPLANATION

Mr. HINOJOSA. Mr. Speaker, on rollcall vote No. 474, final passage of the Treasury, Postal Appropriations Conference Report, H.R. 2378, I was unavoidably delayed. Had I been present to vote, I would have voted ''nay.''

PERSONAL EXPLANATION

Mrs. MALONEY of New York. Mr. Speaker, on rollcall vote No. 474, the conference report to H.R. 2378, Treasury, Postal appropriations for fiscal year 1998, had I been present, I would have voted ''no.''

CONTINUING NATIONAL EMERGENCY WITH RESPECT TO IRAN—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 105–137)

The SPEAKER pro tempore (Mr. LATOURETTE) laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on International Relations and ordered to be printed:

To the Congress of the United States:

Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)) provides for the automatic termination of a national emergency unless, prior to the anniversary date of its declaration, the President publishes in the *Federal Register* and transmits to the Congress a notice stating that the emergency is to continue beyond the anniversary date. In accordance with this provision, I have sent the enclosed notice, stating that the Iran emergency declared in 1979 is to continue in effect beyond November 14, 1997, to the *Federal Register* for publication. Similar notices have been sent annually to the Congress and the *Federal Register* since November 12, 1980. The most recent notice appeared in the *Federal Register* on October 31, 1996. This emergency is separate from that declared with respect to Iran on March 15, 1995, in Executive Order 12957.

The crisis between the United States and Iran that began in 1979 has not been fully resolved. The international tribunal established to adjudicate claims of the United States and U.S. nationals against Iran and of the Iranian government and Iranian nationals against the United States continues to function, and normalization of commercial and diplomatic relations between the United States and Iran has not been achieved. In these circumstances, I have determined that it is necessary to maintain in force the broad authorities that are in place by virtue of the November 14, 1979, declaration of emergency and that are needed in the process of implementing the January 1981 agreements with Iran.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *September 30, 1997.*

NOTICE

CONTINUATION OF IRAN EMERGENCY

On November 14, 1979, by Executive Order 12170, the President declared a national emergency to deal with the threat to the national security, foreign policy, and economy of the United States constituted by the situation in Iran. Notices of the continuation of this national emergency have been transmitted annually by the President to the Congress and the *Federal Register*. The most recent notice appeared in the *Federal Register* on October 31, 1996. Because our relations with Iran have not yet returned to normal, and the process of implementing the January 19, 1981, agreements with Iran is still underway, the national emergency declared on November 14, 1979, must continue in effect beyond November 14, 1997. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Iran. This notice shall be published in the *Federal Register* and transmitted to the Congress.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *September 30, 1997.*

GENERAL LEAVE

Mr. ROGERS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on further consideration of the bill, H.R. 2267, and that I may include tabular and extraneous material.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT, 1998

The SPEAKER pro tempore. Pursuant to House Resolution 239 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 2267.

☐ 1755

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 2267) making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1998, with Mr. HASTINGS of Washington in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole House rose on Friday, September 26, 1997, amendment No. 16 by the gentleman from Georgia [Mr. BARR] had been disposed of and section 616 was open to further amendments.

Are there further amendments to this section of the bill?

Mr. ROGERS. Mr. Chairman, I move to strike the last word to discuss the evening schedule.

Mr. Chairman, the first order of business on the consideration of this bill is the matter dealing with the census. Under the unanimous-consent agreement of last week, debate time on this amendment was limited to 80 minutes.

On this side of the aisle, I do not anticipate any extraneous motions, in which case, if the other side could agree to that, we could have 80 minutes where Members would be able to attend

to other business while the debate on this matter proceeds.

I wonder if the gentleman from West Virginia [Mr. MOLLOHAN] would like to discuss that. If so, I will yield.

Mr. OBEY. Mr. Chairman, would the gentleman from Kentucky [Mr. ROGERS] renew his motion? We could not hear it.

Mr. ROGERS. I did not have a motion. What I had attempted to do was to try to explain to the Members that the first order of business now is the consideration of the census matter, which under the unanimous consent of last week, the debate time is limited to 80 minutes.

If there are no extraneous motions intervening during that period of time on either side, Members can feel free to attend to other business during that period of time without fear of a vote.

□ 1800

I think I can assure the body that there will not be such motions on this side, and if we can have that assurance from that side, Members could have 80 minutes.

Mr. OBEY. Mr. Chairman, will the gentleman yield?

Mr. ROGERS. I yield to the gentleman from Wisconsin.

Mr. OBEY. With all due respect, Mr. Chairman, I cannot give that assurance on this side because I intend to make one of the motions myself.

AMENDMENT OFFERED BY MR. MOLLOHAN

Mr. MOLLOHAN. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part II amendment printed in House Report 105–264 offered by Mr. MOLLOHAN:

In the first paragraph under ''DEPARTMENT OF COMMERCE—BUREAU OF THE CENSUS—PERIODIC CENSUSES AND PROGRAMS'' strike ''Subject to the limitations provided in section 209, for'' and insert ''For''.

Strike section 209 and insert the following:

SEC. 209. None of the funds made available in this Act for fiscal year 1998 may be used by the Department of Commerce to make irreversible plans or preparations for the use of sampling or any other statistical method (including any statistical adjustment) in taking the 2000 decennial census of population for purposes of the apportionment of Representatives in Congress among the States.

SEC. 210. (a) There shall be established a board to be known as the Board of Observers for a Fair and Accurate Census (hereinafter in this section referred to as the ''Board'').

(b)(1) The function of the Board shall be to observe and monitor all aspects of the preparation and implementation of the 2000 decennial census (including all dress rehearsals) to determine whether the process has been manipulated in any way so as to bias the results in favor of any geographic region, population group, or political party, or on any other basis.

(2) In carrying out such function, the Board shall give special attention to the design and implementation of any sampling techniques and any statistical adjustments used in determining the population for purposes of the apportionment of Representatives in Congress among the several States.

(3) The Board shall promptly report to the Congress and the President evidence of any manipulation referred to in paragraph (1).

(c)(1) The Board shall be composed of 3 members as follows:

(A) 1 individual appointed by the President.

(B) 1 individual appointed jointly by the Speaker of the House of Representatives and the President pro tempore of the Senate.

(C) The Comptroller General of the United States.

The members appointed under subparagraphs (A) and (B), respectively, shall be former Presidents or others of similar stature.

(2) Members shall not be entitled to any pay by reason of their service on the Board, but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(d)(1) The Board shall have an Executive Director who shall be appointed by the Board and paid at a rate not to exceed level IV of the Executive Schedule.

(2) The Board may appoint and fix the pay of such additional personnel as it considers appropriate, subject to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code.

(3) Subject to such rules as may be prescribed by the Board, the Board may procure temporary and intermittent services under section 3109(b) of such title 5, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of pay payable for grade GS–15 of the General Schedule.

(4)(A) Upon request of the Board, any personnel of an agency under subparagraph (B) may be detailed to the Board, on a reimbursable basis or otherwise, to assist the Board in carrying out its duties.

(B) The agencies under this subparagraph are the General Accounting Office, the Congressional Research Service, and the Congressional Budget Office.

(e)(1) Notwithstanding any provision of title 13, United States Code, or any other provision of law, members of the Board and any members of the staff who may be designated by the Board under this paragraph shall be granted access to any data, files, information, or other matters maintained by the Bureau of the Census (or received by it in the course of conducting a decennial census of population) which they may request, subject to such regulations as the Board may prescribe in consultation with the Secretary of Commerce.

(2) The regulations shall include provisions under which individuals gaining access to any information or other matter pursuant to paragraph (1) shall be subject to sections 9 and 214 of title 13, United States Code.

(f) The Board shall transmit to the Congress and the President—

(1) interim reports, as least semiannually, with the first such report due by August 1, 1998; and

(2) a final report not later than August 1, 2001.

The final report shall contain a detailed statement of the findings and conclusions of the Board with respect to the matters described in subsection (b), together with any recommendations regarding future decennial censuses of population.

(g) Of the amounts appropriated to the Bureau of the Census for each of fiscal years 1998 through 2001, $2,000,000 shall be available to the Board to carry out this section.

(h) To the extent practicable, members of the Board shall work to promote the most accurate and complete census possible by using their positions to publicize the need for full and timely responses to census questionnaires.

(i) The Board shall cease to exist on September 30, 2001.

The CHAIRMAN. Pursuant to House Resolution 239, the gentleman from West Virginia [Mr. MOLLOHAN] and a Member opposed will each control 40 minutes.

Who seeks time in opposition?

Mr. HASTERT. I do, Mr. Chairman.

The CHAIRMAN. The gentleman from Illinois [Mr. HASTERT] will control 40 minutes.

The gentleman from West Virginia [Mr. MOLLOHAN] is recognized for 40 minutes.

Mr. MOLLOHAN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise to offer an amendment to the bill.

I would first like to thank the distinguished chairman of the Committee on Rules, the gentleman from New York [Mr. SOLOMON], and the distinguished ranking member, the gentleman from Massachusetts [Mr. MOAKLEY], for making the Mollohan-Shays amendment in order. It was the fair thing to do.

Mr. Chairman, this is a bipartisan amendment offered jointly with my colleague from Connecticut [Mr. SHAYS]. I want to take this opportunity to thank him and the many other Members on both sides of the aisle, especially the gentleman from Ohio [Mr. TOM SAWYER] and the gentlewoman from New York [Mrs. CAROL MALONEY], who have worked so hard in support of this amendment.

Mr. Chairman, the Constitution requires that we take a census of the entire population of the United States every 10 years. That means we count everyone, rich people, poor people, rural, urban, all races.

We are increasingly having a problem doing this count accurately. The error rate skyrocketed in 1990 to include 26 million people with an undercount of 1.6 percent of the population, and if we do not do something, Mr. Chairman, it is estimated that in 2000 the undercount will continue to climb. That is a lot of men, women, and children that will be left out of our Nation's family, just left out, Mr. Chairman, a lot from the inner city, a lot of the very rural, a lot of poor folks just left out of the count.

We can do something about this by building on sampling methods which have been a part of the census for the last 50 years. The Census Bureau wants to employ sampling, not only in this Democratic administration, but going back to President Bush's administration when Barbara Bryant, Republican appointed director of the 1990 census, started working to increase the use of sampling in the census. She says now, Mr. Chairman: ''I am very much in favor of the plan the Census Bureau has. It builds work that I started on back in 1990.''

Well, these plans and recommendation are good. It is also good that this bill contains $381 million to plan and

run tests next spring for what could be the most accurate census in our Nation's history.

But there is a very bad provision in this bill, the Hastert substitute which calls for a constitutional review of sampling, and during that review, this provision kills sampling by prohibiting the Census Bureau from spending any money on sampling planning. If the Census Bureau cannot spend money planning for sampling, then we cannot use sampling in the 2000 census; it is just that simple.

Now, Mr. Chairman, the amendment the gentleman from Connecticut [Mr. SHAYS] and I offer removes the Hastert prohibitions and replaces them with the most reasonable language contained in the Senate-passed bill which lets the Census Bureau test scientific sampling methods so long as they are not irreversible. And our amendment goes one step further. We propose to create a board of advisors for a fair and accurate census. This body would be made up of three individuals, one appointed by the President, one jointly appointed by the Speaker and the President pro tem of the Senate, and third, the Comptroller General. The first two appointments shall be former Presidents or men and women of similar stature. The main purpose of the board would be to observe and monitor all aspects of the preparation and the implementation of the 2000 census to assure the process is not in any way manipulated.

Mr. Chairman, those who object to sampling use three main arguments which I think can be soundly refuted. In their first arguments, opponents of sampling cite the Constitution. They assert that the Constitution requires an actual head count of the population. However, separate opinions issued by the Department of Justice under Presidents Carter, Bush, and Clinton, bipartisan in nature, all concluded that the Constitution permits the use of sampling and statistical methods as a part of the census.

Stuart M. Gerson, assistant attorney general, Civil Division, in the Bush administration, concluded in a July 1991 memorandum to the Commerce Department's attorney general that the meaning of the term ''enumeration of the Constitution'' is, quote, more likely found in the accuracy of census-taking than in the selection of any particular method. Continuing, he says, nothing indicates any additional intent on the part of the Framers to restrict for any time, for all time, the manner in which the census is conducted, end of quote.

Additionally, on this issue of constitutionality of sampling, Mr. Chairman, Federal courts have uniformly upheld the use of sampling. For example, in the City of New York v. Department of Commerce, a 1990 case, the court concluded that, quote, because article 1, clause 2, requires the census to be as accurate as practicable, the Constitution is not, is not, a bar to statistical adjustment.

In their second argument, Mr. Chairman, opponents of sampling say that it is bad science. Quite the opposite. The experts and statisticians disagree. After the 1990 census, the Congress asked, because of the bad count, the Congress asked the National Academy of Sciences what could be done to make sure that every person in our country is counted in the 2000 census, unlike the 1990 census. And the National Academy of Sciences recommended sampling, a greater use of sophisticated sampling techniques.

Further, the National Research Council, the American Statistical Association, and the General Accounting Office all have endorsed the use of sampling, the increased use of sampling, in the census.

Barbara Bryant, again, census director under none other than President Bush, had the following to say in a recent letter to Speaker NEWT GINGRICH:

In the long run, our Nation is best served by accuracy. Sample surveys to estimate those who will not or cannot be counted in the 2000 census after the Census Bureau has made every reasonable and good-faith effort to voluntarily enumerate them will increase the accuracy of the census.

Mr. Chairman, in their third argument, opponents of sampling say that the Commerce Department will politicize the results of the census. While I do not in any way share this view, its nature makes it impossible to refute through fact or expert opinion. It can only be refuted through a guarantee of careful oversight, and that is precisely what the Mollohan-Shays amendment does with the board of advisers for a fair and accurate census; it assures oversight.

Mr. Chairman, having refuted the three most used arguments against sampling, only one remains: Fear, the fear that using sampling will affect the political makeup of the House of Representatives. The real manipulation going on today is the Republicans' majority attempt to control funding to prevent the Census Bureau from using the one technique all the experts say will yield the most accurate census. And why are they doing this? By their words, it is, they indicate, that it is because they are afraid of what will happen if every person in this country is counted, afraid they may lose seats in the Congress. I do not agree with that view. It is a false fear.

But in any event, let me remind my colleagues that the purpose of the census is to count the people of our Nation, not to ensure that any political party controls the Congress. We should strive toward accuracy and let the political chips fall where they may. To quote the recent commentary in a Business Week magazine, Census 2000, Math, Not Politics, Please, end of quote.

Mr. Chairman, I would like to close by reaching out to my Republican colleagues, perhaps some from States that had a large undercount in the 1990 census. We cannot pass this amendment without them. Join us in fashioning a census where we count all women, all men, and all children, where we do not leave out four or five or six million inner city, rural, and poor folks. Let us take advantage of this historic opportunity in a bipartisan way to have the best census ever.

Vote for the Mollohan-Shays amendment.

Following are excerpts from decisions of several Federal courts which have considered the issue of the constitutionality and legality of use of sampling and statistical adjustment in the census, and from legal memoranda by senior Justice Department officials from both Republican and Democratic administrations.

United States Court of Appeals for the Sixth Circuit: ''Although the Constitution prohibits subterfuge in adjustment of census figures for purposes of redistricting, it does not constrain adjustment of census figures if thoroughly documented and applied in a systematic manner.''

Young v. *Klutznik*, 652 F.2d 617, 625 (6th Cir. 1981)

United States District Court for the Eastern District of New York: ''This Court concludes that because Article I, section 2 requires the census to be as accurate as practicable, the Constitution is not a bar to statistical adjustment.''

City of New York v. *U.S. Dept. of Commerce*, 739 F.Supp. 761, 767 (E.D.N.Y. 1990)

United States District Court for the Southern District of New York: ''It appears to the Court that this language [in the Constitution] indicates an intent that apportionment be based on a census that most accurately reflects the true population of each state.''

''Consequently, the Court finds defendants' constitutional and statutory objections concerning the impropriety of employing statistical adjustments to compensate for the undercount without merit.''

Carey v. *Klutznik*, 508 F.Supp. 404, 415 (S.D.N.Y. 1980)

United States District Court for the Eastern District of Michigan: ''It is unthinkable to suggest, that, when the allocation of federal resources and the apportionment of Congressional Representatives rest upon an accurate census count, and when the Census Bureau itself knows that there is an undercount, which heavily disfavors Blacks and minorities, and when a method can be found to correct that undercount, that the words 'actual enumeration' in the Constitution prevent an adjustment to obtain a more accurate figure than the actual headcount.''

Young v. *Klutznik*, 497 F.Supp. 1318, 1333 (E.D. Mich 1980)

United States District Court for the Eastern District of Pennsylvania: ''It may be that today an actual headcount cannot hope to be an accurate reflection of either the size or distribution of the Nation's population. If so, it is inconceivable that the Constitution would require the continued use of a headcount in counting the population. Therefore, the Court holds that the Constitution permits the Congress to direct or permit the use of statistical adjustment factors in arriving at the final census results used in reapportionment.''

City of Philadelphia v. *Klutznick*, 503 F.Supp. 663, 679 (E.D.Pa. 1980) (emphasis in original)

United States Court of Appeals for the Second Circuit: ''Reading sections 141 and 195 [of

the Census Act] together in light of their legislative history, we conclude that Congress intended the Secretary (a) to conduct an actual enumeration as part of the decennial census, and (b) in lieu of a 'total' enumeration to use sampling and special surveys 'whenever possible'. Accordingly, we conclude that a statistical adjustment to the initial enumeration is not barred by the Census Act and indeed was meant to be encouraged.''

City of New York v. *U.S. Department of Commerce,* 34 F.3d 1114, 1125 (2d Cir 1994) (citations omitted)

Stuart Gerson, Assistant Attorney General (Civil Division) in the Bush Administration (Legal Opinion for Commerce Dept., July 9, 1991): ''Though the conclusion is not entirely free from doubt, it does appear the Constitution would permit a statistical adjustment if it would contribute to an accurate population count.''

Stuart Gerson, Assistant Attorney General (Civil Division) in the Bush Administration, (Legal Opinion for Commerce Dept., July 9, 1991): ''By directing the conduct of an 'actual Enumeration' for use in subsequent congressional apportionments, the Framers replaced the 'conjectural ratio' used in the initial apportionment, with a more permanent and precise standard. Nothing in the constitutional debates or any other historical records, insofar as we are aware, indicates any additional intent on the part of the framers to restrict for all time—except by constitutional amendment—the manner in which the census is conducted. Rather, the thrust of the 'actual Enumeration' language appears to be simply that the decennial census should represent an accurate counting of the population 'in such manner as [the Congress] shall by Law direct'.''

* * * * *

''In sum, the essence of enumeration, as the term is both generally and constitutionally understood, is more likely found in the accuracy of census taking rather than in the selection of any particular method, i.e., a headcount.''

Walter Dellinger, Assistant Attorney General in the Clinton Administration (Memorandum for the Solicitor General, Oct. 7, 1994): ''Accordingly, we conclude that the Constitution does not preclude the [Census] Bureau from employing technically and administratively feasible adjustment techniques to correct undercounting in the next decennial census.''

Walter Dellinger, Assistant Attorney General in the Clinton Administration (Memorandum for the Solicitor General, Oct. 7, 1994): ''These discussions [at the constitutional convention] make clear that, in requiring an 'actual' enumeration, the Framers meant a set of figures that was not a matter of conjecture and compromise, such as the figures they had themselves provisionally assumed. An 'actual' enumeration would instead be based, as George Mason put it, on 'some permanent and precise standard'. There is no indication that the Framers insisted that Congress adopt a 'headcount' as the sole method for carrying out the enumeration, even if later refinements in the metric of populations would produce more accurate measures.''

John M. Harmon, Asst. Attorney General (Office of Legal Counsel) in the Carter Administration, (Memorandum dated Sept. 25, 1980): ''In sum, the position that the Constitution prohibits any statistical adjustment is not supportable—not as a matter of semantics, Framers' intent, or Supreme Court case law.''

The American Statistical Association Report of the Census Blue Ribbon Panel

EXECUTIVE SUMMARY

In order to improve the accuracy and to constrain the costs of the Decennial Census for the year 2000 the Census Bureau is planning to make increased use of scientific sampling when conducting the Census. Critics have questioned the Bureau's intent to make greater use of sampling. Their criticism may be based upon a misunderstanding of the scientific basis of the Census Bureau's sampling plans. The President of the American Statistical Association appointed this panel and charged it with considering this aspect of the Bureau's plans and the criticisms of them. In our statement, we point out that sampling is an integral part of the scientific discipline of statistics and explain how its use can be an appropriate part of the methodology for conducting censuses.

Congress directed the Bureau of the Census to develop plans for the 2000 Decennial Census that (1) reduce the undercount, particularly the differential in the undercount across population groups, and (2) constrain the growth of costs. Because sampling potentially can increase the accuracy of the count while reducing costs, the Census Bureau has responded to the Congressional mandate by investigating the increased use of sampling. An additional benefit of sampling is that its appropriate use can also reduce the response burden on the population. We endorse the use of sampling for these purposes; it is consistent with best statistical practice.

BACKGROUND

The Bureau of the Census is planning to improve coverage and constrain the costs of the Decennial Census for the year 2000 by making greater use of scientific sampling. Sampling is not new to the Census; it has been used for decades in compiling the Census. The Census Bureau has employed sampling to monitor and improve the quality of interviewers' work, to reduce respondent burden by asking some questions of only a sample of households, to estimate the number of vacant housing units, and to evaluate the completeness of the Census's coverage of the population. In addition, for the year 2000, the Census Bureau's plans include sampling households that do not respond to the mail questionnaire and are not reached in initial interviewer follow-up. This is a procedure known as sampling for ''non-response follow-up.'' The Census Bureau also plans to use sampling to account for the remaining small percentage of households that cannot be counted in the enumeration. This procedure is referred to as ''integrated coverage measurement.'' This increased use of sampling has been criticized; however, we believe the critics may have misunderstood the scientific basis of the Census Bureau's sampling plans.

Plans for the 2000 Census have been developed in response to a dual Congressional mandate to the Bureau. First, the Census Bureau is charged with improving the population count by reducing the undercount (which increased from 1.2% of the population in 1980 to 1.8% of the population in 1990) and, in particular, with reducing or eliminating the differentially higher undercount of some groups, such as Africa-Americans and Hispanics. Second, the Census Bureau is charged with constraining the cost of the 2000 Census (census costs escalated sharply between 1970 and 1990, even after allowing for inflation and population growth). In carrying out this dual mandate from the Congress, the Census Bureau has considered a variety of procedural and technical improvements to the 2000 Census and has developed plans to use sampling for non-response follow-up and for integrated coverage measurement. The Bureau has also created and consulted with a number of advisory groups and has sought the advice of several National Academy of Science panels.

As the Decennial Census draws nearer, Congress has been monitoring the Bureau's planning process more closely. The Bureau's proposed additional uses of sampling have created some controversy within Congress. Several recent actions, as well as proposed legislation, would affect the Bureau's ability to use sampling in the 2000 Census.

Two bills have been introduced in Congress that would restrict the role of sampling in the 2000 Census. One bill, HR3558, sponsored by Congresswoman Carrie Meek (D-Florida), states that ''the Bureau shall attempt to contact every household directly (whether by mail or in person), and may use sampling as a substitute for direct contact in a particular census tract only after direct contact has been made with at least 90 percent of the households in such tract.'' This bill reflects concern about the Census Bureau's proposed plan to begin the use of sampling for non-response follow-up when 90 percent of the households have been enumerated in each county (counties are usually larger and more diverse geographic areas than are census tracts). The other bill, HR3589, sponsored by Congressman Thomas Petri (R-Wisconsin), states that Title 13 of the U.S. Code shall be amended to add the following: ''In no event may sampling or other statistical procedures be used in determining the total population by states . . . for purposes of the apportionment of Representatives in Congress among the several States.'' This bill would prohibit the use of any sampling to determine population counts used for congressional apportionment. This effectively prevents the use of sampling for any purpose other than collection of demographic or economic data through the ''long form.''

In June, the House Committee on Government Reform and Oversight prepared a report that recommended against sampling in the Census either to complete the field work or to correct the undercount. The committee has not yet considered or voted on the report. In early August, the Senate Committee on Appropriations approved a report to accompany the Fiscal Year 1997 Commerce Department funding bill that would prohibit the Census Bureau from preparing to use sampling in the Decennial Census. The full Senate is expected to consider the bill in September.

This statement has been composed by a panel appointed by the President of the American Statistical Association to consider the Census Bureau's plans to increase the use of sampling in the conduct of the next Census. The purpose of this statement is to point out that sampling is an integral part of the scientific discipline of statistics and to explain briefly how its use can be an appropriate part of the methodology for conducting censuses.

STATEMENT

Uses of and the Scientific Basis for Sampling

Sampling is used widely in science, medicine, government, agriculture, and business because it is the fundamental basis for addressing specific questions in these arenas. Sampling is a critical tool for reducing uncertainty; it is possible to draw conclusions from a scientific sample of empirical observations with specific levels of confidence in our conclusions. Statistics, a branch of applied mathematics, is a rigorous discipline based upon centuries of development of the principles of probability and the empirical study of their applications. The use of sampling combined with the mathematics of

probability provide the basis for drawing scientific inferences from observations. Without this basis, confirming or rejecting scientific theories would be impossible.

Specific areas that use statistical sampling extensively include auditing, market research, quality assurance, approving new drugs, and medical testing. For example, physicians use a sample of blood drawn from a patient to draw conclusions about all the blood in the patient's body. A full census of a patient's blood is not possible, and a small sample is fully adequate to measure the concentration of a specific chemical in the patient's blood system. Sampling permits observations to be made efficiently, economically, and fairly. Without sampling, we would not have quality control in our industries, soil testing in agriculture, or most of the national statistics on which the nation depends. Well-designed samples are used to draw accurate conclusions in many applications. The specific design of a sample in a particular setting depends on the particular problem being addressed. In complex situations such as the census, the detailed sample designs require careful analysis by people skilled and experienced in census taking.

Using Sampling to Improve the Population Count

The appropriate use of sampling can improve the count of a population. The basic idea underlying this conclusion is that some parts of the population will be easier to count and some more difficult. After an effort has been made to reach all households, some number of households will not have been reached; little is known about these households. Well-designed sampling to obtain information about them can reduce what would otherwise be a differential undercount between the easier to count and harder to count groups in the population. The attachment to this statement briefly explains the underlying logic of how sampling can improve population counts and also reduce costs.

In fact, every census is, in some sense, a sample, since everyone cannot be reached. Some countries, more authoritarian than ours, have ordered all people to remain in their homes all day on Census Day until the police or the army have come to count them. In democratic countries, however, everyone cannot be reached and counted. Those who have been counted amount to a sample of the total population, but this is not a sample based on probability theory because the reasons for missing information in the census are not understood. A probability based sample design, as planned by the Census Bureau, permits inferences to be drawn about the entire population with a specified level of confidence. The discipline of statistics largely focuses on reducing uncertainty through the use of sampling and other statistical techniques that permit inferences to be drawn about those missing in a sample. Thus, scientific probability sampling is broadly applicable to census taking.

In addition, sampling can reduce the burden on respondents to the census. Just as it is not necessary to impose on the medical patient the burden of withdrawing all the blood to measure the platelet count, it is not necessary to count every household and every person in the country in order to draw conclusions about the country. Careful design and execution of probability sampling can permit samples to generate data and precise inferences in which we can have considerable confidence. Indeed, the ability to employ sampling is perhaps the single most important element in the government's effort to reduce the burden it imposes on the population from which it collects statistics.

Conclusion

Congress directed the Bureau of the Census to develop plans for the 2000 Decennial Census that (1) reduce the undercount particularly the differential in the undercount across population groups, and (2) constrain the growth of costs. Because sampling has the potential to increase the quality and accuracy of the count and reduce costs, the Census Bureau has responded to the Congressional mandate by investigating the increased use of sampling. An additional benefit of sampling is that its appropriate use can also reduce the response burden on the population. The use of sampling for these purposes is consistent with sound statistical practice.

CONGRESSIONAL RESEARCH SERVICE,
LIBRARY OF CONGRESS,
Washington, DC, September 29, 1997.

To: Honorable Carolyn B. Maloney, Attention: David McMillen
From: American Law Division
Subject: Questions re Legislative Provision for Expedited Judicial Review of Use of sampling and statistical Adjustment in Year 2000 Census

This memorandum is in response to your request for our consideration of four questions dealing with the implementation and likely impact of language added to H.R. 2267, the Commerce, Justice, State, and Judiciary Appropriations Bill. By the terms of the Rule granted the bill by the Committee on Rules, H. Res. 239; H. Rept. 105–264, the provision, set out in the cited report, was adopted upon the adoption of the Rule.

Briefly stated, the provision §209 of H.R. 2267, authorizes ''[a]ny person aggrieved'' by the use of a statistical method of determining population in connection with the year 2000, or later, census, to bring a civil action for declaratory, injunctive, and other appropriate relief against the use of the method on the ground that it is contrary to the Constitution or statute. The definition of an ''aggrieved person'' for purposes of the section is stated to be any resident of a State whose congressional representation or district ''could'' be changed by the use of a statistical method, any Representative or Senator, or either House of Congress. The action authorized is to be heard and determined by a three-judge district court, pursuant to 28 U.S.C. §2284. Expedited appeal direct to the Supreme Court of any decision by the district court is provided for under specified deadlines for filing.

A significant provision, subsection (b), states that ''the use of any statistical method in a dress rehearsal or similar test or simulation of a census in preparation for the use of such method, in a decennial census, to determine the population for purposes of the apportionment or redistricting of members in Congress shall be considered the use of such method in connection with that census.''

Under subsection (d)(2), no appropriated funds may be used for any statistical method, in connection with the decennial census, once a judicial action is filed, until it has been judicially determined that the method is authorized by the Constitution and by act of Congress.

Three of your questions relate to the likelihood of a Supreme Court decision, using the expedited procedure, either by the time of the beginning of the 1998 census dress rehearsal (approximately March 15, 1998) or prior to the census in 2000. Inasmuch as the date of the decision in any such case depends substantially on the filing date of the suit, and the beginning of the running of any period of expedition, we cannot even guess whether a Supreme Court decision would be likely before either event. Certainly, the date of the start of the dress rehearsal, if it is March 15, 1998, is less than six months from now, much less from the time of enactment of the provision, if it is enacted, and from the time a statistical method is tested, if that is sufficient to confer standing. Thus, we can be confident that a decision by March 15, 1998, is highly unlikely. A decision by the beginning of the start of the 2000 census is certainly possible, if a suit may be filed early enough. However, as we indicate below, it is doubtful that anyone would have standing by then, even in light of the section, to bring an action.

We can indicate, from the time line of past cases, especially those where Congress has provided especially for judicial review and expedited consideration, that the courts are enabled to proceed promptly and in less time than with respect to the ordinary case. For example, the most recent case was handled very expeditiously. *Raines* v. *Byrd*, 117 S.Ct. 2312 (1997). Congress in 1996 enacted the Line-Item Veto Act, which went into effect on January 1, 1997. The following day, six Members of Congress filed suit. The District Court handed down its decision on April 10, 1997. Pursuant to the statute's authorization, an appeal was filed in the Supreme Court on April 18, the Court granted review on April 23, and, even though the argument period for the Term had run, special oral argument was entertained on May 27, and the decision by the Supreme Court was rendered on June 26.

Thus, the time from filing in the District Court to the issuance of a decision by the Supreme Court was less than seven months, although we must observe that the decision was based on the lack of standing by the Members, perhaps a less difficult issue than the question on the merits. Nonetheless, the time frame was significant.

Other cases could be cited. For example, in *Bowsher* v. *Synar*, 478 U.S. 714 (1986), testing the constitutionality of certain features of the Gramm-Rudman-Hollings law, the Balanced Budget and Emergency Deficit Control Act of 1985, the courts moved promptly, again acting within a congressionally-enacted provision for expedited judicial review. The President signed the bill into law on December 12, 1985, and suit was filed the same day. A three-judge district court was impaneled, and a decision was issued on February 7, 1986. An appeal was filed in the Supreme Court on February 18, review was granted on February 24, oral argument was held on April 23, and the Court's decision was issued on July 7.

The time line was thus about seven months.

One may assume, therefore, that a suit, properly brought, challenging the use of some form of statistical adjustment, could be processed within a relatively brief time, perhaps within seven months and perhaps within a briefer period. However, that assumption is of little importance, because the substantial question, the hard issue, turns on what party has standing to bring such a suit; that is, when is a suit ''properly brought''?

That the use of statistical methods, of samplings and adjustments, is not a frivolous question is evident. The argument is whether the Constitution in requiring an ''actual Enumeration,'' Art. I, §2, cl. 3, mandates an actual counting or permits some kind of statistical analysis to enhance the count; the further argument is whether Congress, in delegating to the Secretary of Commerce its authority to conduct the census ''in such Manner as [it] shall by Law direct,'' has by instructing him to take ''a decennial census of the population . . . in such form and content as he may determine . . .'', 13 U.S.C. §141(a), supplied him with sufficient authority to supplement or to supplant the

actual count through statistical methods. The Supreme Court has reserved decision on both issues. *Wisconsin* v. *City of New York*, 116 S.Ct. 1091, 1101 nn. 9, 11 (1996).

Courts have entertained suits arising out of these and similar issues. E.g., *Wisconsin* v. *City of New York*, supra; *Franklin* v. *Massachusetts*, 505 U.S. 738 (1992); *Dept. of Commerce* v. *Montana*, 503 U.S. 442 (1992). However, all three cases arose after the actual conduct of or official decision about a particular action that resulted in actual injury to a State or to a political subdivision. These cases, and earlier decisions in the lower courts concerning the 1990 and 1980 censuses, certainly stand for the proposition that polities have standing to sue to contest actions that have already occurred and that have injured them. They do little to advance the inquiry required by §209.

All citizens, of course, have an interest that the Constitution be observed and followed, that laws be enacted properly based on and permitted by the Constitution, and that laws be correctly administered. However, this general interest, shared by all, is insufficient to confer standing on persons as citizens or as taxpayers. *Schlesinger* v. *Reservists Com. to Stop the War*, 418 U.S. 208 (1974); *United States* v. *Richardson*, 418 U.S. 166 (1974). See also *Valley Forge Christian College* v. *Americans United*, 454 U.S. 464, 483 (1982); *Allen* v. *Wright*, 468 U.S. 737, 754 (1984); *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Congress may not overturn this barrier to suit in federal court by devising a test law suit. E.g., *Muskrat* v. *United States*, 219 U.S. 346 (1911) (striking down a statute authorizing certain named Indians to bring a test suit against the United States to determine the validity of a law affecting the allocation of Indian lands, in which the attorneys' fees of both sides were to be paid out of tribal funds, deposited in the Treasury).

Standing is one element of the justiciability standard, which limits Article III federal courts to the decision only of cases that properly belong within the role allocated to federal courts. ''[A]t an irreducible minimum,'' the constitutional requisites under Article III for the existence of standing are that the party seeking to sue must personally have suffered some actual or threatened injury that can fairly be traced to the challenged action of the defendant and that the injury is likely to be redressed by a favorable decision. E.g., *Allen* v. *Wright*, 468 U.S., 751; *Lujan* v. *Defenders of Wildlife*, supra, 504 U.S., 560; *Raines* v. *Byrd*, 117 S.Ct., 2317–18. ''We have always insisted on strict compliance with this jurisdictional standing requirement.'' Id., 2317.

The first element, injury in fact, is a particularly stringent requirement. ''[T]he plaintiff must have suffered an 'injury in fact'—an invasion of a legally protected interest which is (a) concrete and particularized, . . . and (b) actual or imminent, not conjectural or hypothetical. ''*Lujan* v. *Defenders of Wildlife*, 504 U.S., 560 (internal quotation marks omitted). As the latter part of the element indicates, a party need not await the consummation of the injury in order to be able to sue. However, as the decisions combining parts of standing and of Article III ripeness show, pre-enforcement challenges to criminal and regulatory legislation will be permitted if the plaintiff can show a realistic danger of sustaining an injury to his rights as a result of the governmental action impending; a reasonable certainty of the occurrence of the perceived threat to a constitutional interest is sufficient to afford a basis for bringing a challenge, provided the court has before it sufficient facts to enable it to intelligently adjudicate the issues. *Buckley* v. *Valeo*, 424 U.S. 1, 113–18 (1976); *Duke Power Co.* v. *Carolina Environmental Study Group*, 438 U.S. 59, 81–2 (1978); *Babbitt* v. *Farm Workers*, 442 U.S. 238, 298 (1979); *Regional Rail Reorganization Act Cases*, 419 U.S. 102, 138–48 (1974). The Court requires, though, particularized allegations that show a reasonable certainty, an actual threat of injury. See *Renne* v. *Geary*, 501 U.S. 312 (1991); *Lujan* v. *Defenders of Wildlife*, 504 U.S., 564–65 & n. 2.

Critically, in any event, the certainty of injury requirement is a constitutional limitation, while the factual adequacy element is a prudential limitation on judicial review. *Regional Rail Reorganization Act Cases*, 419 U.S., 138–48.

Congress is free to legislate away prudential restraints upon the jurisdiction of the courts and to confer standing to the utmost extent permitted by Article III. But, Congress may not legislatively dispense with Article III's constitutional requirement of a distinct and palpable injury to a party or, if the injury has not yet occurred, a realistic danger of its happening. *Warth* v. *Seldin*, 422 U.S. 490, 501 (1975); *Raines* v. *Byrd*, 117 S.Ct., 2318 n. 3. Cf. *United States* v. *SCRAP*, 412 U.S. 669 (1973), disparaged in *Whitmore* v. *Arkansas*, 495 U.S. 149, 159 (1990), asserting that it ''surely went to the outer limit of the law.'' The Court has firmly held that Congress, in pursuit of judicial oversight over government activity in areas of general public interest, areas that would not support standing in the first instance, may not enlarge the scope of judicial review by definitionally expanding the meaning of standing under Article III. *Lujan* v. *Defenders of Wildlife*, 504 U.S., 571–78. ''Whether the courts were to act on their own, or at the invitation of Congress, in ignoring the concrete injury requirement described in our cases, they would be discarding a principle fundamental to the separate and distinct constitutional role of the Third Branch—one of the essential elements that identifies those 'Cases' and 'Controversies' that are the business of the courts rather than of the political branches.'' Id., 576. ''[Statutory] broadening [of] the categories of injury that may be alleged in support of standing is a different matter from abandoning the requirement that the party seeking review must himself have suffered an injury.'' Id., 578 (quoting *Sierra Club* v. *Morton*, 405 U.S. 727, 738 (1972)).

Turning, then, to the proposed §209, we must observe that the precedents strongly counsel that the conferral of standing, especially in its definitional design of injury in fact, would be inadequate to authorize judicial review until the occurrence of the injury, the calculation of population figures showing the gains and losses of seats in the House of Representatives.

First, the conferral of standing in subsections (c)(2) and (3) is likely ineffective. In *Raines* v. *Byrd*, supra, Congress had included in the Line-Item Veto Act authorization for ''[a]ny Member of Congress'' to bring an action to contest the constitutionality of the Act. The Court held that the Members seeking to sue had suffered no personal, individualized injury, only rather an assertion of an institutional injury to their status as Members, that was inadequate under Article III. Conceivably, Members representing a State that lost one or more seats in the House as a result of statistical re-evaluation of the census enumeration could suffer the same injury that all residents of the State incurred, but that injury would be confined as we discuss below.

Second, while either the House of Representatives or the Senate may have interests that could be injured by Executive Branch action, giving either body or both bodies standing to bring an action, what interest either House could assert in the reallocation of seats in the House of Representatives is unclear at best.

Third, §209(a) authorizes ''[a]ny person aggrieved by the use of any statistical method . . . in connection with . . . [a] census, to determine the population for purposes of the apportionment or redistricting of members of Congress . . .'' to bring a court action to challenge the constitutionality of or the statutory basis of the statistical method. Under §209(c)(1), an ''aggrieved person'' is defined to include ''an resident of a State whose congressional representation or district *could* be changed as a result of the use of a statistical method.'' (Emphasis supplied). By §209(b), it is provided that ''the use of any statistical method in a dress rehearsal or similar test or simulation of a census in preparation for the use of such method . . . *shall be considered the use of such method in connection with that census.*'' (Emphasis supplied). That is, any person residing in a state that ''could'' lose House representation as a result of a statistical adjustment of a census may sue as soon as there is ''a dress rehearsal or similar test or simulation of a census.''

The case law makes it clear that this authorization, if enacted, would run afoul of constitutional barriers to congressional conferral either of standing or of ripeness or both.

Under Article III, for a litigant to have standing, he must allege an injury in fact to himself or to an interest; if the injury has not yet occurred, he must allege a strong basis for fear that the injury will happen, that there is a real danger of the injury being felt. The quoted provisions purport to confer standing far beyond this constitutional requirement.

To illustrate, when each census occurs, it is the responsibility of the Bureau of the Census to calculate, using what is called ''the method of equal proportions,'' 2 U.S.C. §2a(a), the number of seats, above the one each State is constitutionally guaranteed, to be allocated to each State, and the numbers are processed by the Department of Commerce, which refers them to the President, who has the responsibility to transmit them to Congress. See generally *Dept. of Commerce* v. *Montana*, 503 U.S. 442 (1992); *Franklin* v. *Massachusetts*, 505 U.S. 788, *Wisconsin* v. *City of New York*, 116 S.Ct. 1091 (1996). The allocation is not final until the President submits the figures to Congress. *Franklin* v. *Massachsuetts*, 505 U.S. 796–801. It is then that the loss of a seat or seats is legally final, and it seems clear that the States losing seats have suffered a cognizable injury, enabling them to bring suit to challenge at least certain aspects of the conduct of the census. Id., 801–803.

Whether residents of a State that has lost one or more seats in the House of Representatives have standing to bring suit is questionable. Certainly, voters in a State in which redistricting is not accomplished through the creation of equally-populated districts have standing to complain about the dilution of their voting strength. E.g., *Wesberry* v. *Sanders*, 376 U.S. 1 (1964); *Darcher* v. *Daggett*, 462 U.S. 725 (1983). And a resident of a congressional district that has been drawn impermissibly using race has standing to challenge that districting. *United States* v. *Hays*, 515 U.S. 737 (1995). But in the context of a State losing a House seat, every resident of that State has a general interest that is shared by all other residents. It is not a particularized injury in fact that is what normally confers standing.

Let us, however, assume that residents would have standing. The injury would not occur until the President transmits the figures to Congress. Even if one could allege the imminent likelihood of injury, a realistic danger of injury, that development is only

going to mature when the census is completed and the calculations are made awarding the correct number of seats to each House. And we hear speak of a challenge to the actual census.

The challenge, however, authorized by §209, is to the use of a statistical method that ''could'' change the result of the census enumeration. An injury in fact would not occur, again, until the result is reported to Congress by the President; an imminent injury in fact could conceivably occur when the Census Bureau and the Commerce Department utilize a statistical adjustment that changes the allocation of seats. But that occurs after the tabulation of the census result and the utilization of a statistical method that changes the result of the census count itself.

The Supreme Court has never approved standing premised on an allegation that a particular governmental action ''could'' cause an injury. Of course, the application of a statistical method ''could'' work a change in the census, but to which States and with what results would be extremely speculative under the best of circumstances.

Moreover, the definition of the ''use of any statistical method'' to include a test, or dress rehearsal, or simulation of a census would confer standing that is even further removed from the occurrence of the event that ''could'' or ''might'' result in an injury. It would be impossible to point to any result of the conduct of a test or whatever that might conceivably occasion the loss of one or more House seats.

Because Congress lacks the power to create a definition of standing or of the imminent likelihood of injury giving standing that would infringe the constitutional requirement of standing—of injury in fact or of the imminent likelihood of injury—it appears extremely likely that the Supreme Court would either strike down the provision, cf. *City of Boerne* v. *Flores,* 117 S.Ct. 2157 (1997), or disregard it. Cf. *Raines* v. *Byrd,* supra.

Finally, we must note §209(e) that purports to authorize any executive branch agency or entity having authority to carry out the census to bring a civil action to obtain a declaratory judgment as to its constitutional and statutory powers in this regard. It seems doubtful that this authority could be exercised. It would likely fall under the principle that no suit may be maintained unless there is adversity between the plaintiffs and the defendants. See *Muskrat* v. *United States,* 219 U.S. 346 (1911). What government agencies have to do is to proceed on the basis of their judgment about their powers, and then they will be subject to suit challenging that judgment. This subsection appears to do nothing less than to authorize an agency to seek an advisory opinion.

JOHNNY H. KILLIAN,
Senior Specialist,
American Constitutional Law.

Mr. MOLLOHAN. Mr. Chairman, I reserve the balance of my time.

Mr. HASTERT. Mr. Chairman, I yield myself as much time as I may consume.

Mr. Chairman, I believe that every Member of this House can agree that we need to conduct the census that includes all Americans and is free of any partisan manipulation. There are those who say that this no longer can be accomplished by actually counting Americans. They want to restore the statistical methods in order to estimate or guess how many people are in this country. They have thrown up their hands and said an accurate census cannot be done by counting.

Mr. Chairman, it can be done, and in fact it has been done. Once again Washington bureaucrats need to listen and learn from folks outside the beltway.

In testimony before my subcommittee, communities like Milwaukee, Wisconsin, Indianapolis, and Cincinnati describe how they conducted an actual count at accuracy levels higher than those the Census Bureau proposes to achieve with their risky statistical scheme. Census Bureau Director Riche may not trust her ability to count, but Michael Morgan in Milwaukee proved he knew how to do it.

Mr. Chairman, census sampling is a bad idea, but there is a more fundamental question: Is it legal and constitutional to use sampling and statistical adjustment to apportion this House among the States? I believe it is clear that census sampling and statistical adjustments are both illegal and unconstitutional. In that light, to blindly move forward with a $5 million census that could well be thrown out by the Supreme Court would be very foolish.

□ 1815

Article I, section 2 of the Constitution states that actual enumeration of the population be conducted every 10 years.

To enumerate means to count, one-by-one. It does not mean that we should use sampling as a shortcut just because counting might be hard. Nor does it mean that we should use statistical adjustment to manipulate the count so that the results are more to someone else's liking.

The 14th amendment to the Constitution States that ''Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State.'' The 14th amendment does not tell us to use statistics; it tells us to count.

Title 13 of the United States Code, section 195, states that ''Except for the determination of population for purposes of apportionment of Representatives in Congress among the several States, the Secretary shall, if he considers it feasible, authorize the use of the statistical method known as sampling.''

Mr. Chairman, the statute is crystal clear. While allowing statistical methods for nonconstitutionally required purposes, the 1957 statute explicitly maintained an absolute firewall against the use of statistical methods for reapportionment. This was a wise, bipartisan precaution designed to prevent the census from deteriorating into a partisan power grab.

Mr. Chairman, the Congress reaffirmed this firewall once again in 1976 when it passed into law Title 13, section 141 of the United States Code. This section allows the Secretary broad discretion in the use of statistical methods for nonapportionment purposes. Let me repeat: for nonapportionment purposes.

The supporters of census sampling would have us believe that section 141 allows that sampling be used for reapportionment. That is simply not true. Congress specifically left intact the absolute prohibition on their use of apportionment purposes established in section 195. If Congress had intended that sampling be used for reapportionment, they would have repealed section 195 at that time. They did not.

Mr. Chairman, the law is clear, and I believe that the Justices will confirm that. The Justices know that actual enumeration means to count. Listen to what Justice Scalia said during the last census case, and I quote:

> The text of the Constitution, as I read it, does not say that there will be an estimate of the number of citizens. It talks about actual enumeration. It doesn't even use the word ''census''. It says actual enumeration.

He added, and I quote,

> Adjustment techniques ultimately involve kinds of value choices and are therefore politically manipulable.

Mr. Chairman, the Justices also know that they will ultimately be called on to rule on the legality of sampling. In the case that I just mentioned the city of New York tried to force a statistical adjustment of the census. The Supreme Court ruled that the Secretary of Commerce could not be forced to do so. During the oral arguments, Justice Scalia said that this case will decide whether you must use statistical estimates and the next one will decide whether you may use it.

Mr. Chairman, the Supreme Court will answer that fundamental question sooner or later. My language in this bill is designed to make it sooner. My colleagues on the other side of the aisle should not be afraid to let the Supreme Court rule. It is our duty as the people's representatives to see their tax money is spent wisely, not wasted. The wisest course for Congress today is to take the politics out of the census and let the Supreme Court decide before billions of tax dollars are wasted.

Mr. Chairman, the Mollohan-Shays amendment does not protect the census from political mischief or the taxpayers from fiscal disaster. The Mollohan-Shays amendment will leave taxpayers wide open to multibillion dollar boondoggles. Protect the integrity of our census and the tax dollars of hard-working Americans. Reject the Mollohan-Shays amendment and allow the Supreme Court to rule.

Mr. Chairman, I reserve the balance of my time.

Mr. MOLLOHAN. Mr. Chairman, I yield such time as he may consume to the gentleman from Illinois [Mr. DAVIS].

(Mr. DAVIS of Illinois asked and was given permission to revise and extend his remarks.)

Mr. DAVIS. Mr. Chairman, I rise in support of the Mollohan-Shays amendment.

Mr. Chairman, I rise today and join my colleagues in strong support of the Mollahan-Shays amendment. This amendment is about

ensuring an accurate count of the 2000 census. The Constitution requires an accurate count, not a headcount. This amendment would allow the use of statistical sampling to conduct the 2000 census.

Since 1790, during the first census there was a significant undercount especially among minorities. Two hundred years later in 1990, it is estimated that the census missed 10 percent of the population. The Government Accounting Office estimates that as many as 26 million people were missed. Locally, in the State of Illinois, the undercount was about .98 percent. In Cook County undercount was about 1.6 percent. The city of Chicago undercount was about 2.4 percent.

Furthermore, African-Americans were said to have anywhere from a 5–6 percent undercount; Latinos were about 5 percent; and Asian Pacific Islanders were about a 3-percent undercount.

The statistics demonstrate that the poor and mainly racial minorities are seriously missed. Africans-Americans are 7 times as likely to be missed as Whites. That translates into being—7 times more likely to be denied resources and representation in Congress, State legislatures, city councils, county boards and other political subdivision. An undercount among minorities furthers their deprivation to Federal money while devaluing their political power. Billions of Federal dollars are at stake. Governmental agencies often use census data to dole out money or at least to determine targeted areas for distribution. There are some 120 federally-funded programs that move approximately $150 billion a year, which use the census data in their formulation for distribution.

In 1990, children made up only one-fourth of the population but accounted for 52 percent of the undercount. The children, the most vulnerable people in our society have been denied representation and valuable resources because of this significant undercount.

This amendment simply seeks to ensure that each and every individual is counted without regard to color, wealth, or status. This amendment protects both the urban and rural dweller.

If the primary goals of the upcoming census are to reduce cost and to eliminate the differential undercount, then let's take the politics out of the census. The real issue is how to get the most accurate count and the real answer is sampling.

Statistical sampling and estimation techniques have been proposed as a means to finish the undercount for the 10 percent that are the hardest to reach—the hardest to find, the left out, the hopeless and helpless, traditionally minorities and the poor. This is not the first time that sampling has been used in the census. This approach has also been endorsed by expert panels of the National Academy of Sciences, the American Statistical Association, the Commerce Department's Inspector General, the GAO and various other professional organizations.

As a matter of fact, three separate panels convened by the National Academy of Sciences have recommended that the Census Bureau use sampling in the 2000 census to save money and improve accuracy. The commerce IG has said that sampling and statistical methods are the only way to eliminate the historic, disproportionate undercount of people of color and the poor.

Ten percent of the count in 1990 was wrong. The Census Bureau will make an unprecedented effort to count all Americans directly. Sampling is scientific, not guessing.

Conducting the most accurate census must be the goal for the 2000 census, that goal cannot be met without the use of sampling. We owe it to ourselves and we owe it to the American people.

Therfore, I urge my colleagues to join me in support of this amendment that would allow for the use of statistical sampling.

Mr. MOLLOHAN. Mr. Chairman, I yield such time as he may consume to the gentleman from Missouri [Mr. CLAY].

(Mr. CLAY asked and was given permission to revise and extend his remarks.)

Mr. CLAY. Mr. Chairman, I thank the gentleman for yielding, and I rise in support of the Mollohan-Shays amendment.

Mr. Chairman, no one honestly or seriously disputes that the 1990 census undercounted the population. Nor does anyone honestly or seriously dispute the fact that minority populations, blacks and Hispanics especially, as well as rural residents and children were disproportionately undercounted.

Though my colleagues on the other side of the aisle will try to confuse the issue, there is no debate at all within the scientific community that the use of statistical sampling would improve the accuracy of the census.

So what is this debate about? Some have contended that statistical sampling may be a means by which the census would be intentionally distorted. The sponsors of this amendment have dealt with that concern by crafting an amendment that, among other things, provides assurances that sampling will be conducted in a scientific, non-partisan manner.

So what are the real concerns? Well, Mr. Chairman, it is blatantly obvious to me that those who oppose sampling fear that their own political power would be threatened by an accurate census. And, rather than contest for political power out in the open, they prefer a system that denies millions of Americans the representation they are due under our Constitution.

In the end, what this debate is about is whether we reject the view that some people may as well be invisible and whether we will abide by the principle of one man-one vote. I urge my colleagues to support the Mollohan-Shays amendment.

Mr. MOLLOHAN. Mr. Chairman, I yield 2 minutes to the gentlewoman from New York [Mrs. MALONEY], who is the ranking minority member on the Subcommittee on Government Management, Information, and Technology of the Committee on Government Reform and Oversight.

Mrs. MALONEY of New York. Mr. Chairman, sending the census sampling issue before the Supreme Court certainly sounds like a righteous compromise, but beware of a wolf in sheep's clothing. The Supreme Court will decide in favor of sampling, but while we are waiting as long as a year, the stalling will kill sampling for the 2000 census. Indecision will become the decision. Missing the Census Bureau deadlines for as long as a year means certain death for a fair and accurate census.

There has been a great deal of misinformation that has been bandied about, and I would like to set the record straight on the Census Bureau's plan. What the Census Bureau plans to do will be the largest peacetime mobilization ever. Ninety percent of the people will be counted using traditional methods. People will be contacted four times through the mail. They will be contacted by phone for the first time. Community outreach will include forms that are in post offices, stores, churches, malls, and TV ads are in the works.

Then the Bureau will begin to knock on doors, but we know that many of these doors will remain shut because people do not open their doors to strangers, they are not there, they are at work. And only for the last 10 percent, for those people who could not be reached by mail, phone, a knock on the door, or through the media, only for that last 10 percent will statistical sampling be used.

Mr. Chairman, we know that some people are more likely to be missed than others. They are our Nation's poor, our Nation's minorities. They are the people who most need to be heard and who are most often silenced. The use of sampling is the civil rights issue of the 1990's.

There are hundreds of professional organizations, community groups, editorial boards across the country, experts, who all endorse sampling. The Mollohan-Shays amendment will give people the simple right to the representation that they deserve.

I urge my colleagues to do what is right for all of their constituents. Make sure they can count on us not to count them out in the year 2000 census. Vote for the Mollohan-Shays bipartisan amendment.

Mr. Chairman, I include for the RECORD data from the Congressional Research Service in support of my position. The CRS report says that the Hastert amendment will just block forward-going of an accurate census.

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, DC, September 29, 1997.

To: Honorable Carolyn B. Maloney, Attention: David McMillen.

From: American Law Division.

Subject: Questions re Legislative Provision for Expedited Judicial Review of Use of sampling and statistical Adjustment in Year 2000 Census.

This memorandum is in response to your request for consideration of four questions dealing with the implementation and likely impact of language added to H.R. 2267, the Commerce, Justice, State, and Judiciary Appropriations Bill. By the terms of the Rule granted the bill by the Committee on Rules, H. Res. 239; H. Rept. 105–264, the provision, set out in the cited report, was adopted upon the adoption of the Rule.

Briefly stated, the provision §209 of H.R. 2267, authorizes ''[a]ny person aggrieved'' by the use of a statistical method of determining population in connection with the year 2000, or later, census, to bring a civil action for declaratory, injunctive, and other appropriate relief against the use of the method on

the ground that it is contrary to the Constitution or statute. The definition of an ''aggrieved person'' for purposes of the section is stated to be any resident of a State whose congressional representation or district ''could'' be changed by the use of a statistical method, any Representative or Senator, or either House of Congress. The action authorized is to be heard and determined by a three-judge district court, pursuant to 28 U.S.C. §2284. Expedited appeal direct to the Supreme Court of any decision by the district court is provided for under specified deadlines for filing.

A significant provision, subsection (b), states that ''the use of any statistical method in a dress rehearsal or similar test or simulation of a census in preparation for the use of such method, in a decennial census, to determine the population for purposes of the apportionment or redistricting of members in Congress shall be considered the use of such method in connection with that census.''

Under subsection (d)(2), no appropriated funds may be used for any statistical method, in connection with the decennial census, once a judicial action is filed, until it has been judicially determined that the method is authorized by the Constitution and by act of Congress.

Three of your questions relate to the likelihood of a Supreme Court decision, using the expedited procedure, either by the time of the beginning of the 1998 census dress rehearsal (approximately March 15, 1998) or prior to the census in 2000. Inasmuch as the date of the decision in any such case depends substantially on the filing date of the suit, and the beginning of the running of any period of expedition, we cannot even guess whether a Supreme Court decision would be likely before either event. Certainly, the date of the start of the dress rehearsal, if it is March 15, 1998, is less than six months from now, much less from the time of enactment of the provision, if it is enacted, and from the time a statistical method is tested, if that is sufficient to confer standing. Thus, we can be confident that a decision by March 15, 1998, is highly unlikely. A decision by the beginning of the start of the 2000 census is certainly possible, if a suit may be filed early enough. However, as we indicate below, it is doubtful that anyone would have standing by then, even in light of the section, to bring an action.

We can indicate, from the time line of past cases, especially those where Congress has provided especially for judicial review and expedited consideration, that the courts are enabled to proceed promptly and in less time than with respect to the ordinary case. For example, the most recent case was handled very expeditiously. *Raines* v. *Byrd,* 117 S.Ct. 2312 (1997). Congress in 1996 enacted the Line-Item Veto Act, which went into effect on January 1, 1997. The following day, six Members of Congress filed suit. The District Court handed down its decision on April 10, 1997. Pursuant to the Statute's authorization, an appeal was filed in the Supreme Court on April 18, the Court granted review on April 23, and, even though the argument period for the Term had run, special oral argument was entertained on May 27, and the decision by the Supreme Court was rendered on June 28.

Thus, the time from filing in the District Court to the issuance of a decision by the Supreme Court was less than seven months, although we must observe that the decision was based on the lack of standing by the Members, perhaps a less difficult issue than the question on the merits. Nonetheless, the time frame was significant.

Other cases could be cited. For example, in *Bowsher* v. *Synar,* 478 U.S. 714 (1986), testing the constitutionality of certain features of the Gramm-Rudman-Hollings law, the Balanced Budget and Emergency Deficit Control Act of 1985, the courts moved promptly, again acting within a congressional-enacted provision for expended judicial review. The President signed the bill into law on December 12, 1985,and suit was filed the same day. A three-judge district court was impaneled, and a decision was issued on Feburary 7. 1986. An appeal was filed in the Supreme Court on February 18, review was granted on February 24, oral argument was held on April 23, and the Court's decisions was issued on July 7.

The time line was thus about seven months.

One may assume, therefore, that a suit, properly brought, challenging the use of some form of statistical adjustment, could be processed within a relatively brief time, perhaps within seven months and perhaps within a briefer period. However, that assumption is of little importance, because the substantial question, the hard issue, turns on what party has standing to bring such a suit; that is, when is a suit ''properly brought''?

That the use of statistical methods, of samplings and adjustments, is not a frivolous question is evident. The argument is whether the Constitution in requiring an ''actual Enumeration,'' Art. I, §2, cl. 3, mandates an actual counting or permits some kind of statistical analysis to enhance the count; the further argument is whether Congress, in delegating to the Secretary of Commerce its authority to conduct the census ''in such Manner as [it] shall by Law direct,'' has by instructing him to take ''a decennial census of the population . . . in such form and content as he may determine . . .'', 13 U.S.C. §141(a), supplied him with sufficient authority to supplement or to supplant the actual count through statistical methods. The Supreme Court has reserved decision on both issues. *Wisconsin v. City of New York,* 116 S.Ct. 1091, 1101 nn. 9, 11 (1996).

Courts have entertained suits arising out of these and similar issues, E.g., *Wisconsin v. City of New York,* supra; *Franklin v. Massachusetts,* 505 U.S. 738 (1992); *Dept. of Commerce v. Montana,* 503 U.S. 442 (1992). However, all three cases arose after the actual conduct of or official decision about a particular action that resulted in actual injury to a State or to a political subdivision. These cases, and earlier decisions in the lower courts concerning the 1990 and 1980 censuses, certainly stand for the proposition that polities have standing to sue to contest actions that have already occurred and that have injured them. They do little to advance the inquiry required by §209.

All citizens, of course, have an interest that the Constitution be observed and followed, that laws be enacted properly based on and permitted by the Constitution, and that laws be correctly administered. However, this general interest, shared by all, is insufficient to confer standing on persons as citizens or as taxpayers. *Schlesinger v. Reservists Com. to Stop the War,* 418 U.S. 208 (1974); *United States v. Richardson,* 418 U.S. (1974). See also *Vallety Forge Christian College v. Americans United,* 454 U.S. 464, 483 (1982); *Allen v. Wright,* 468 U.S. 737, 754 (1984); *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560 (1992). Congress may not overturn this barrier to suit in federal court by devising a test law suit. *E.g., Muskrat v. United States,* 219 U.S. 346 (1911) (striking down a statute authorizing certain named Indians to bring a test suit against the United States to determine the validity of a law affecting the allocation of Indian lands, in which the attorneys' fees of both sides were to be paid out of tribal funds, deposited in the Treasury).

Standing is one element of the justiciability standard, which limits Article III federal courts to the decision only of cases that properly belong within the role allocated to federal courts. ''[A]t an irreducible minimum,'' the constitutional requisites under Article III for the existence of standing are that the party seeking to sue must personally have suffered some actual or threatened injury that can fairly be traced to the challenged action of the defendant and that the injury is likely to be redressed by a favorable decision. E.g., *Allen v. Wright,* 468 U.S., 751; *Lujan v. Defenders of Wildlife,* supra, 504 U.S., 560; *Raines v. Byrd,* 117 S.Ct., 2317–18, ''We have always insisted on strict compliance with this jurisdictional standing requirement.'' Id., 2317.

The first element, injury in fact, is a particularly stringent requirement. ''[T]he plaintiff must have suffered an 'injury in fact'—an invasion of a legally protected interest which is (a) concrete and particularized, . . . and (b) actual or imminent, not conjectural or hypothetical.'' *Lujan v. Defenders of Wildlife,* 504 U.S., 560 (internal quotation marks omitted). As the latter part of the element indicates, a party need not await the consummation of the injury in order to be able to sue. However, as the decisions combining parts of standing and of Article III ripeness show, pre-enforcement challenges to criminal and regulatory legislation will be permitted if the plaintiff can show a realistic danger of sustaining an injury to his rights as a result of the governmental action impending; a reasonable certainty of the occurrence of the perceived threat to a constitutional interest is sufficient to afford a basis for bringing a challenge, provided the court has before it sufficient facts to enable it to intelligently adjudicate the issues, *Buckley v. Valeo,* 424 U.S. 1, 113–18 (1976); *Duke Power Co. v. Carolina Environmental Study Group,* 438 U.S. 59, 81–2 (1978); *Babbitt v. Farm Workers,* 442 U.S. 289, 298 (1979); *Regional Rail Reorganization Act Cases,* 419 U.S. 102, 138–48 (1974). The Court requires, though, particularized allegations that show a reasonable certainty, an actual threat of injury. See *Renne v. Geary,* 501 U.S. 312 (1991); *Lujan v. Defenders of Wildlife,* 504 U.S., 564–65 & n. 2.

Critically, in any event, the certainty of injury requirement is a constitutional limitation, while the factual adequacy element is a prudential limitation on judicial review. *Regional Rail Reorganization Act Cases,* 419 U.S., 138–48.

Congress is free to legislate away prudential restraints upon the jurisdiction of the courts and to confer standing to the utmost extent permitted by Article III. But, Congress may not legislatively dispense with Article III's constitutional requirement of a distinct and palpable injury to a party or, if the injury has not yet occurred, a realistic danger of its happening. *Warth v. Seldin,* 422 U.S. 490, 501 (1975); *Raines v. Byrd,* 117 S.Ct., 2318 n. 3. Cf. *United States v. SCRAP,* 412 U.S. 669 (1973), disparaged in *Whitmore v. Arkansas,* 495 U.S. 149, 159 (1990), asserting that it ''surely went to the outer limit of the law.'' The Court has firmly held that Congress, in pursuit of judicial oversight over government activity in areas of general public interest, areas that would not support standing in the first instance, may not enlarge the scope of judicial review by definitionally expanding the meaning of standing under Article III. *Lugan v. Defenders of Wildlife,* 504 U.S., 571–78, ''Whether the courts were to act on their own, or at the invitation of Congress, in ignoring the concrete injury requirement described in our cases, they would be discarding a principle fundamental to the separate and distinct constitutional role of the Third Branch—one of the essential elements that identifies those 'Cases' and 'Controversies' that are the business of the courts rather than of the political

branches.'' Id., 576. ''[Statutory] broadening [of] the categories of injury that may be alleged in support of standing is a different matter from abandoning the requirement that the party seeking review must himself have suffered an injury.'' Id., 578 (quoting *Sierra Club v. Morton*, 405 U.S. 727, 738 (1972)).

Turning, then, to the proposed §209, we must observe that the precedents strongly counsel that the conferral of standing, especially in its definitional design of injury in fact, would be inadequate to authorize judicial review until the occurrence of the injury, the calculation of population figures showing the gains and losses of seats in the House of Representatives.

First, the conferral of standing in subsections (c)(2) and (3) is likely ineffective. In *Raines v. Byrd*, supra, Congress had included in the Line-Item Veto Act authorization for ''[a]ny Member of Congress'' to bring an action to contest the constitutionality of the Act. The Court held that the Members seeking to sue had suffered no personal, individualized injury, only rather an assertion of an institutional injury to this status as Members, that was inadequate under Article III. Conceivably, Members representing a State that lost one or more seats in the House as a result of statistical re-evaluation of the census enumeration could suffer the same injury that all residents of the State incurred, but that injury would be confined as we discuss below.

Second, while either the House of Representatives or the Senate may have interests that could be injured by Executive Branch action, giving either body or both bodies standing to bring an action, what interest either House could assert in the reallocation of seats in the House of Representatives is unclear at best.

Third, §209(a) authorizes ''[a]ny person aggrieved by the use of any statistical method . . . in connection with . . . [a] census, to determine the population for purposes of the apportionment or redistricting of members of Congress . . .'' to bring a court action to challenge the constitutionality of or the statutory basis of the statistical method. Under §209(c)(1), an ''aggrieved person'' is defined to include ''any resident of a State whose congressional representative or district *could* be changed as a result of the use of a statistical method.'' (Emphasis supplied). By §209(b), it is provided that ''the use of any statistical method in a dress rehearsal or similar test or simulation of a census in preparation for the use of such method . . . *shall be considered the use of such method in connection with that census.*'' (Emphasis supplied). That is, any person residing in a state that ''could'' lose House representation as a result of a statistical adjustment of a census may sue as soon as there is ''a dress rehearsal or similar test or simulation of a census.''

The case law makes it clear that this authorization, if enacted, would run afoul of constitutional barriers to congressional conferral either of standing or of ripeness or both.

Under Article III, for a litigant to have standing, he must allege an injury in fact to himself or to an interest; if the injury has not yet occurred, he must allege a strong basis for fear that the injury will happen, that there is a real danger of the injury being felt. The quoted provisions purport to confer standing far beyond this constitutional requirement.

To illustrate, when each census occurs, it is the responsibility of the Bureau of the Census to calculate, using what is called ''the method of equal proportions,'' 2 U.S.C. §2a(a), the number of seats, above the one each State is constitutionally guaranteed, to be allocated to each State, and the numbers are processed by the Department of Commerce, which refers them to the President, who has the responsibility to transmit them to Congress. See generally *Dept. of Commerce v. Montana*, 503 U.S. 442 (1992); *Franklin v. Massachusetts*, 505 U.S. 788, *Wisconsin v. City of New York*, 116 S.Ct. 1091 (1996). The allocation is not final until the President submits the figures to Congress. *Franklin v. Massachusetts*, 505 U.S., 796–801. It is then that the loss of a seat or seats is legally final, and it seems clear that the States losing seats have suffered a cognizable injury, enabling them to bring suit to challenge at least certain aspects of the conduct of the census. Id., 801–803.

Whether residents of a State that has lost one or more seats in the House of Representatives have standing to bring suit is questionable. Certainly, voters in a State in which redistricting is not accomplished through the creation of equally-populated districts have standing to complain about the dilution of their voting strength. E.g., *Wesberry v. Sanders*, 376 U.S. 1 (1964); *Darcher v. Daggett*, 462 U.S. 725 (1983). And a resident of a congressional district that has been drawn impermissibly using race has standing to challenge that districting. *United States v. Hays*, 515 U.S. 737 (1995). But in the context of a State losing a House seat, every resident of that State has a general interest that is shared by all other residents. It is not a particularized injury in fact that is what normally confers standing.

Let us, however, assume that residents would have standing. The injury would not occur until the President transmits the figures to Congress. Even if one could allege the imminent likelihood of injury, a realistic danger of injury, that development is only going to mature when the census is completed and the calculations are made awarding the correct number of seats to each House. And we hear speak of a challenge to the actual census.

The challenge, however, authorized by §209, is to the use of a statistical method that ''could'' change the result of the census enumeration. An injury in fact would not occur, again, until the result is reported to Congress by the President; an imminent injury in fact could conceivably occur when the Census Bureau and the Commerce Department utilize a statistical adjustment that changes the allocation of seats. But that occurs after the tabulation of the census result and the utilization of a statistical method that changes the result of the census count itself.

The Supreme Court has never approved standing premised on an allegation that a particular governmental action ''could'' cause an injury. Of course, the application of a statistical method ''could'' work a change in the census, but to which States and with what results would be extremely speculative under the best of circumstances.

Moreover, the definition of the ''use of any statistical method'' to include a test, or dress rehearsal, or simulation of a census would confer standing that is even further removed from the occurrence of the event that ''could'' or ''might'' result in an injury. It would be impossible to point to any result of the conduct of a test or whatever that might conceivably occasion the loss of one or more House seats.

Because Congress lacks the power to create a definition of standing or of the imminent likelihood of injury giving standing that would infringe the constitutional requirement of standing—of injury in fact or of the imminent likelihood of injury—it appears extremely likely that the Supreme Court would either strike down the provision, cf. *City of Boerne v. Flores*, 117 S.Ct. 2157 (1997), or disregard it. Cf. *Raines v. Byrd*, supra.

Finally, we must note §209(e) that purports to authorize any executive branch agency or entity having authority to carry out the census to bring a civil action to obtain a declaratory judgment as to its constitutional and statutory powers in this regard. It seems doubtful that this authority could be exercised. It would likely fall under the principle that no suit may be maintained unless there is adversity between the plaintiffs and the defendants. See *Muskrat v. United States*, 219 346 (1911). What government agencies have to do is to proceed on the basis of their judgment about their powers, and then they will be subject to challenging that judgment. This subsection appears to do nothing less than to authorize an agency to seek an advisory opinion.

JOHNNY H. KILLIAN,
Senior Specialist,
American Constitutional Law.

CONGRESS OF THE UNITED STATES,
Washington, DC, September 29, 1997

SUPPORT MOLLOHAN-SHAYS

CRS: Supreme Court Review Won't Happen

DEAR COLLEAGUE: Last week the Rules Committee changed the restrictive language on the census in the Commerce, Justice, State Appropriations bill at the request of Rep. Hastert, to ban the use of modern statistical methods pending a court decision. Proponents of the Hastert language argue that they have provided a compromise, but in reality this is just another attempt to stop the census from counting everyone.

We have always believed that it is legal to use sampling in the Census, based on Supreme Court decisions and opinions from the Justice Department under three Presidents. Because we take seriously concerns about partisan manipulation of the census, we support the Mollohan-Shays Amendment setting up a three-member bipartisan panel to oversee Census 2000. Mr. Hastert instead proposed a court review. Today we received a memorandum from the Congressional Research Service responding to a request to analyze the Hastert language. In short, the Hastert language will not result in a decision on the constitutionality of sampling, it will only block the use of appropriated funds.

The first issue is what lawyers call standing: whether someone can sue over the use of sampling in the census. In other words, has someone been injured by a government action, and can thus use the courts to address that injury. The Hastert language tries to get around this issue by declaring in the bill who has standing to sue. Unfortunately, the Constitution does not allow that. There is a Constitutional test to determine who has standing in a case, and Congress cannot bypass that requirement in a law. As CRS said, ''The case law makes it clear that this authorization, if enacted, would run afoul of constitutional barriers to Congressional referral either of standing or of ripeness or both.''

Even if standing were not a constitutional problem for the Hastert proposal, the Supreme Court has made it quite clear that a challenge to the census must take place after the numbers are final. As the CRS report says, ''[W]e must observe that the precedents strongly counsel that the conferral of standing, especially in its definitional design of injury in fact, would be inadequate to authorize judicial review until the occurrence of injury, the calculation of population figures showing the gains and losses of seats in the House of Representatives.''

The CRS memorandum is quite clear that this language will not work. ''The case law makes it clear that this authorization, if enacted, would run afoul of constitutional barriers to congressional conferral either of

standing or of ripeness or both.'' The memorandum goes on to say ''. . . it appears extremely likely that the Supreme Court would either strike down the provision, or disregard it.''

Only the Mollohan-Shays Amendment works towards a fair and accurate census.

CAROLYN MALONEY,
CHRISTOPEHR SAHYS,
Members of Congress.

PROFESSIONAL ORGANIZATIONS THAT HAVE ENDORSED THE USE OF SAMPLING IN THE 2000 CENSUS

National Academy of Sciences Panel on Census Requirements in the Year 2000 and Beyond.

National Academy of Sciences Panel to Evaluate Alternative Census Methods.

American Statistical Association.

American Sociological Association.

Council of Professional Associations on Federal Statistics.

National Association of Business Economists.

Association of University Business and Economic Research.

Association of Public Data Users.

Decision Demographics.

Mr. HASTERT. Mr. Chairman, I yield 2 minutes to the gentlewoman from Ohio [Ms. PRYCE].

Ms. PRYCE of Ohio. Mr. Chairman, I rise today in strong opposition to the Mollohan amendment on census sampling, and in support of the provision offered by the gentleman from Illinois [Mr. HASTERT].

As a former judge I want to stress that sampling is neither a Republican issue nor a Democratic issue. It is a legal issue and a constitutional issue which ultimately should and must be settled by the U.S. Supreme Court, not a politicized commission as proposed by the Mollohan amendment. By defeating the Mollohan amendment, we will help clear the way for enactment of the Hastert provision.

Now, here is what the Hastert provision does. First, it recognizes that the legislative and executive branches have reached an unresolvable impasse on the subject of sampling and statistical adjustment. Then it asks the judicial branch to fulfill the role envisioned for it by the Founding Fathers in the Constitution, and step in and decide this dispute through the court system. Then it protects the taxpayer by getting a court decision on the legality of sampling and statistical adjustment before billions of taxpayer dollars are spent and potentially wasted.

Now, just like a judge would issue a temporary restraining order to prevent further harm in a dispute between two private parties, the Hastert provision would move to protect the taxpayers from potential harm by putting a temporary hold on funding for sampling while the court hears the case. Once the Supreme Court has reached a final decision, the temporary funding hold is removed and the Census Bureau will be free to spend money in compliance with the law as determined by the court.

Mr. Chairman, I urge my colleagues to defeat the Mollohan amendment and to allow the enactment of the Hastert provision. Then we will count. We will count the poor, we will count the minorities, we will count all Americans, as is required by the Constitution.

Mr. MOLLOHAN. Mr. Chairman, I am pleased to yield 3 minutes to the distinguished gentlewoman from Maryland [Mrs. MORELLA].

Mrs. MORELLA. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I rise today in strong support of the Mollohan-Shays amendment. The Census Bureau needs the full $381.8 million appropriated in fiscal year 1998 to prepare for the Census 2000. Fencing off all but $100 million would jeopardize critical components of census preparation, including the dress rehearsal and the preparation of the long form.

As Members of Congress, we depend on the accurate information provided by the census to give us insight into our changing communities and constituencies. If this amendment is not passed and data is not collected in Census 2000, we will lose the only reliable and nationally comparable source of information on our population. Both the private and public sectors, including State, county and municipal agencies, educators and human service providers, corporations, researchers, political leaders, and Federal agencies rely on the census long form.

The Mollohan-Shays amendment is critical if we are to prevent the mistakes that were made in 1990. I served on the Committee on Post Office and Civil Service during the 1990 census and I saw firsthand the mistakes that were made.

According to the GAO, the 1990 census got 10 percent of the count wrong. Over 26 million people were missed, double-counted, or counted in the wrong place. Let me quote from the GAO Capping report on the 1990 census, which makes it clear that a straight count will not work. GAO reported that, ''the current approach to taking the census needs to be fundamentally reassessed.''

''The current approach to taking the census appears to have exhausted its potential for counting the population cost-effectively,'' et cetera.

''Specifically, the amount of error in the census increases precipitously as time and effort are extended to count the last few percentages of the population.''

There is, my friends, strong scientific evidence that sampling will result in the most accurate census possible. The experts agree that spending more money to go door-to-door will result in errors as large or larger than 1990, and that the 2000 census will be more accurate for all congressional districts than 1990, 19 times more accurate for the Nation.

As a result of the GAO evaluation and bipartisan direction from Congress, the Census Bureau turned to the National Academy of Science for advice. The first panel said, ''physical enumeration or pure 'counting' has been pushed well beyond the point at which it adds to the overall accuracy of the census.''

That panel went on to recommend a census that started with a good faith effort to count everyone, but then truncate physical enumeration and use sampling to estimate the characteristics of the remaining nonrespondents.

Following these recommendations, the Census Bureau announced in February of 1995 a plan for the 2000 census which makes an unprecedented attempt to count everyone by mail, followed by door-to-door enumeration until reaching 90 percent of the households in each census tract. A sample of households is then used to estimate the last 10 percent.

I know my time has expired. A whole list of scientific organizations agree with it. It will save money, and it will be an accurate count.

Mr. HASTERT. Mr. Chairman, I yield myself 15 seconds just to inform the gentlewoman from Maryland that the Census Bureau gets all of the money that they asked for, it is not fenced off, and so she is misinformed.

Mr. Chairman, I yield 6 minutes to the distinguished gentleman from Kentucky [Mr. ROGERS], chairman of the subcommittee.

☐ 1830

Mr. ROGERS. Mr. Chairman, I thank the gentleman for yielding me the time.

Mr. Chairman, I rise in opposition to the Mollohan amendment and in support of the provisions in the bill regarding the 2000 census. While I certainly respect and appreciate the efforts of my distinguished ranking member, the gentleman from West Virginia [Mr. MOLLOHAN], and I know that his intention is good, his amendment fails to address any of the real issues surrounding the 2000 census.

My colleagues, this is one of the most important issues that will come before the Congress. It is the Congress' constitutional responsibility to ensure that an actual enumeration of the population is conducted once every 10 years. Those are the words in the Constitution.

There is no other activity conducted by the Federal Government that has more of an impact on the daily lives of each and every one of our constituents. The census is used for everything, from ensuring that our constituents' constitutional right of one person-one vote is upheld, to determining how Federal dollars are apportioned to our communities.

Many of us are all too familiar with the consequences of a disputed census. In 1990, the American taxpayer spent $2.6 billion on the 1990 census. What did we get? A botched census, a census whose results were litigated for most of the decade, a census whose results will forever be questioned. We cannot afford another disaster like 1990. But that is exactly where we are headed if the Congress does not accept its responsibility

to ensure that the 2000 census is above reproach.

The administration's plan for the 2000 census represents the most radical departure from the manner in which the census has been conducted for the last 200 years. Serious doubts have been raised about whether the administration is planning a fair census, a legal census, a constitutional census. Many of us believe the administration plans are not fair, and that they will not result in a more accurate census.

Why? For starters, we have already seen how dangerous an error-prone statistical manipulation can be in the census. In 1990, over the objections of the Census Bureau ''experts'', the Secretary of Commerce refused to adjust the census numbers using statistics because he thought they were inaccurate. He was right. Years after the fact the same Census Bureau ''experts'' discovered their statistically manipulated numbers had overestimated the number of people missed by millions, and because of a computer glitch would have mistakenly caused Pennsylvania to lose a seat in this body.

Just last month, the Census Bureau had to retract their own report extolling the accuracy of their census plans because a computer glitch underestimated the error rates. But even more importantly, unlike 1990, we are not even going to have an actual count of the population. Why? Because the administration only wants to count 90 percent of us, and then guess the rest. So how will we ever know what the actual count was, and how will we ever know if statistical adjustment is more accurate? The answer is, we never will. The administration expects us to trust the experts, the same ones that recommended we use faulty numbers to adjust the 1990 census.

But even more fundamental to this debate is the question of whether the administration's plans are legal and constitutional. Many of us believe they are not. We can debate those issues all day and night. It would not matter, because only the courts can decide that, and the courts will decide that, one way or the other. The only question is, when.

Under the bill, we say, have the courts resolve the questions now before we spend $4 billion on a census that is likely to be held illegal or unconstitutional. Does the Mollohan amendment address those questions? No. Even worse, it strikes the very provisions in the bill that would ensure the courts answer these questions before the fact.

In fact, instead of addressing any of these serious questions surrounding the census, the Mollohan amendment avoids them entirely, and instead tries to say that the only concern surrounding the census is the threat of political manipulation. That is just not the case, though certainly, given the track record of this administration, I can understand how people would be so concerned.

Even if it were the only concern, the Mollohan amendment is not the answer. Why? Because the commission has neither the expertise nor the power to oversee the administration's complicated, convoluted census 2000.

If Members want to know how well an oversight commission works, we have a recent example, the Teamsters election. The taxpayers spent $21 million on an oversight board for the Teamsters election, and what was the result? They threw out the election and they are going to start all over again, I guess. They are going to ask us to oversee it a second time. They had better ask us real hard about that. If we need any evidence about whether an oversight commission can protect the census, look to the Teamsters. We will spend $4 billion on the census, and then we will have to start all over again in 2001.

It is the Congress' duty to oversee the census. It is our duty to ensure that it is fair, that it is legal, and that it is constitutional. The Mollohan amendment would have us abdicate that constitutional responsibility.

At a time when the public's faith in the institutions of government is at an all-time low, we have a duty to ensure that the 2000 census is above reproach. Make no mistake about it, the very integrity of the census is at stake here, not to mention a multibillion dollar taxpayer investment.

Mr. Chairman, I urge rejection of the Mollohan amendment.

Mr. MOLLOHAN. Mr. Chairman, I yield such time as she may consume to the distinguished gentlewoman from California [Ms. ROYBAL-ALLARD].

(Ms. ROYBAL-ALLARD asked and was given permission to revise and extend her remarks.)

Ms. ROYBAL-ALLARD. Mr. Chairman, I thank the gentleman for yielding time to me.

I rise in strong support of the Mollohan-Shays amendment.

Mr. MOLLOHAN. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK of Massachusetts. Mr. Chairman, if what the gentleman who just spoke wanted to have happen could happen, I would support it. What he said is look, there is a constitutional question here. Let us, before anything happens, go to the United States Supreme Court and ask them to tell us. They will not do it. There is a core principle of American constitutionalism, which conservatives usually adhere to, which says they do not issue advisory opinions. The United States Supreme Court does not decide until there is a case or controversy, defined repeatedly by Justice Scalia, who was quoted only partially on one point, as injury in fact.

We recently had an effort to try to get around that by getting an advisory opinion in effect on the line item veto. The Supreme Court unanimously said, or almost unanimously said no, you cannot have it. What the gentleman from Kentucky is asking for is impossible. What he says is, we will go to court.

But the Supreme Court will not decide it. Standing is a core conservative principle. I thought the gentleman's amendment was written by William O. Douglas. I thought William O. Douglas had channeled himself through to somebody on the other side, because he is the great liberal justice who says there is a constitutional question, let me at it, I will handle it. What in fact the conservatives said is, no. You talk about judicial activism, this is a monument to judicial activism. This is a constitutional question. We will ask the United States Supreme Court for an advisory opinion. It will not give it to you. It requires an injury in fact.

Here is how you define standing. Here is who could bring this lawsuit. Any resident of a State, resident, not even a citizen, any resident of a State whose congressional district could, not was, could, in fact be changed. If you thought that your district might gain under this, you could go in and get an advisory opinion.

The Supreme Court will not do it. No one familiar with this jurisprudence thinks remotely that you could force this. If it were possible, it would be a good way. But remember, we said, we will have to deal with these first through the electoral process and the political process, and only after the fact can you go to court. Who said that? That was done by conservatives to keep the non-elected judiciary from being too intrusive. What the gentleman's amendment does is to reverse that principle of judicial restraint.

Mr. HASTERT. Mr. Chairman, I yield 2 minutes and 40 seconds to the gentleman from Georgia [Mr. KINGSTON].

Mr. KINGSTON. Mr. Chairman, there is a story of a very learned doctor of theology, a distinguished minister, who was walking through the park one day. He sees a guy who is kind of an itinerant of sorts, and he is reading the Book of Revelations. The doctor of theology says to him, in a condescending, intellectual way, my good man, ''Do you have any idea at all of what you are reading in the Book of Revelations?'' To which the guy said, ''No, I can't say I understand every little bit of it.'' And he says, ''Then sir, why are you reading it?'' He said, ''Because I know how it ends.''

What I am saying, Mr. Chairman, is I do not believe this is a debate of pointy-headed intellectual bean-counters. I think this is a debate about common sense. Here is how I understand this issue. Under the normal U.S. census procedure, you go to a house. You ask how many folks live there. Three. You go to the second house. How many live there? Seven. How many live in the third house? Six. You write down three, seven, six. You come up with 16.

Now, under the Democratic samplematics, you are doing it a little more creatively. You go to the first house and count three, to the second

house and count seven, and at the third house you go to the drugstore and get yourself a Coca-Cola, and you sample about 20 people there. Then, depending on how many you need, you say, in total, we got maybe 15 to 25 people, depending on how many the folks need back in the office, and that is the count.

Now, let us say that is how this thing works, in layman's terms, so I can understand it. Now think about it in other potential applications. We may want to take a second look at this as Members of Congress. What would be some other potential sampling applications?

How about balancing your checkbook? No problems with overdrafts. How about adjusting your income taxes; you know, sending it to the IRS, and when they start complaining, there is a lot of IRS passion going on these days, you can say, ''Hey, look, I just used sampling to send you what I owed you.''

That has often handicapped us. I will just say that a lot of people sample on their golfing already. On the SAT, for those Members with teenaged kids trying to get into college, sample up the SAT score, 1,500. Speeding tickets: ''Officer, I was going about 100, but I was sampling. Just give it to me at 55.'' That is what this is about.

Mr. Chairman, the 14th Amendment of the United States says it real easy for someone like me and a lot of other folks, that counting the whole number of persons in each State is the way to do your sampling.

Mr. MOLLOHAN. Mr. Chairman, I am pleased to yield 2 minutes to the distinguished gentleman from North Carolina [Mr. WATT].

Mr. WATT of North Carolina. Mr. Chairman, I thank the gentleman for yielding me the time.

Mr. Chairman, I do not believe there is a Member of this House who over the last 5 years has risen in defense of the United States Constitution more than I have. I honestly would tell the Members if I thought statistical sampling was unconstitutional, regardless of the political consequences. I would be rising in support of the Constitution, in defense of the Constitution.

I think this whole constitutional argument is a bogus argument, however, and it fails to read the entire sentence in Article I, Section 2, clause 3 of the Constitution, because that section of the Constitution requires an actual enumeration, but then it goes on to say, ''. . .in such manner as the Congress shall by law direct.'' And all of these gentlemen who have gotten up and talked about requiring a head count seem to be ignoring the second part of the sentence.

Every single Justice Department that has opined on this issue, the Bush Justice Department, the Carter Justice Department, the Clinton Justice Department, have all said that statistical sampling is fine under the Constitution. Every single court that has addressed this issue has said that statistical sampling is acceptable under the Constitution.

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The Federal District Court, Eastern District of New York, said it is no longer novel or in any sense new law to declare that statistical adjustment of the census is both legal and constitutional because article I, section 2, requires the census to be as accurate as practical. The Constitution is not a bar to statistical sampling. This is a bogus argument that my colleagues are using. Statistical sampling is constitutional.

I rise in support of the amendment.

Mr. HASTERT. Mr. Chairman, I yield 2 minutes to the gentleman from Iowa [Mr. LATHAM], a member of the subcommittee, who is well familiar with bean counters.

Mr. LATHAM. Mr. Chairman, I guess being in the soybean business, we do count a few beans there.

But I think we have to look at what this debate really is all about. We are talking about the census, but really what it gets down to is money and power. It really gets down to the debate of whether we want those things distributed in a fair and honest manner or if we want someone possibly with political motivation to guess at where those things go.

No. 1, with the money, as everyone here knows, and I do not know if the folks at home know that where the Federal dollars are distributed is based on the count, would we rather have an actual real count to know that we are getting our share of Federal dollars or would we like a bureaucrat here in Washington to guess at it?

As far as power, it has to do with how many Representatives we have from our States. If our State is kind of on the bubble here as to whether we are going to lose a seat or gain a seat, do we want that determined by an actual real count or do we want a bureaucrat here in Washington to make that determination for us and mute our voices? It is simply wrong to go that route.

I do not necessarily say that there is going to be politics involved in this census or this guessing that we are proposing do here, but let us look at the record. Has this administration politicized any other departments in government? Look at the FBI. There are 900 files of private citizens for political reasons in the White House today. They brought in over a million citizens last year for the election and did not check the background, for political reasons, of 180,000 of them. There are 30,000 convicted felons in this country because they politically wanted to get more people registered to vote.

Would they politicize the census? What do my colleagues think? We need an honest, fair, real, legal, and constitutional census, and that means to count real people.

Mr. MOLLOHAN. Mr. Chairman, I yield myself 45 seconds to respond to the gentleman, if he would stay at the podium.

I would just like to assure the gentleman, that is precisely the reason. That is the one argument against the census that cannot be refuted by fact, because it is based upon suspicion. That is why we created this oversight board, which is composed of former Presidents, people who have absolute credibility, to give the census credibility, because this kind of a debate that the gentleman just engaged in, in and of itself, is the greatest underminer of public confidence.

Also, with regard to the efficacy of sampling, our own Speaker GINGRICH must have believed in the efficacy of sampling because on April 30, 1991, he wrote, in part, to the Secretary of Commerce, I quote, I respectfully request that the census numbers for the State of Georgia be readjusted to reflect the accurate population of the State so as to include the over 100,000 which were not previously included.

Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Texas [Mr. STENHOLM].

(Mr. STENHOLM asked and was given permission to revise and extend his remarks.)

Mr. STENHOLM. Mr. Chairman, though much of the debate on correcting the undercount of the census is centered around the number of people not counted in urban areas, as one who represents a very rural district, I want to highlight the fact that people in rural areas are being missed as well. In fact, some of our rural areas are undercounted to a greater degree than the entire country.

According to the Census Bureau, the net undercount for the Nation in 1990 was 1.6 percent, while rural areas were undercounted at a rate of 5.9 percent. I want to emphasize that accuracy is critical. Let there be no disagreement on that as we prepare for the 2000 census. The Census Bureau should form early and active partnerships with State and local governments so that these governments will have an early opportunity to review census address lists and maps for their area.

This amendment will remove the restrictive language included in the bill and allow the Census Bureau to continue to plan for the 2000 census. Their proposal, which is supported by scientists and statistical experts, should improve accuracy and save costs.

It is fascinating to sit here and listen to colleague after colleague argue against the best science available. I have taken to this well day after day after day, arguing that we should use the best science available, whether we are talking about environmental issues, food safety issues, or census issues. But tonight in this debate, we are being selective as to which science we should use. I find this a fascinating argument to listen to.

I am convinced, absolutely convinced, that statistical sampling is the best method to get an accurate census,

and I urge my colleagues to listen to this debate and to listen to those who are saying that only some science is good and we will be selective in which we choose to agree to. Statistical scientists say that sampling will help us get an accurate count. Is that not what we all should really be for?

I urge my colleagues to support the Mollohan-Shays amendment.

Mr. HASTERT. Mr. Chairman, I yield 1 minute to the gentleman from Florida [Mr. MILLER]

Mr. MILLER of Florida. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from West Virginia and in opposition to the use of sampling.

I am a former statistics professor. I taught statistics at both the undergraduate and graduate level at several universities. I have respect for sampling, but sampling is used when you do not have enough time or money. What you really want to have is census information, statistics. When you use sampling, you have bias. You have nonsampling bias, and you have sampling bias.

In my first lecture on statistics both at the graduate level and the undergraduate level, I used to use this book, still available to buy in the book store. It is ''How To Lie With Statistics.''

Statistics can be manipulated in a variety of ways that can be legitimately defended. I do not trust statistics. I teach my students to be suspicious of statistics, to be cautious of the use of statistics. I used to make the statement, tell me the point you want me to prove, and I will prove it with statistics, because it can be done.

I know all the statisticians say sampling is great. Statisticians would not have a job if we did not have sampling. That is what statistics is based on. Statisticians are biased to start with.

I think we are doing a good job. What we need to do is do a good census. Dr. Riche is moving in that direction. Let us look at the examples of what took place in Milwaukee and what took place in Cincinnati. We can do a good census. Let us do the job right and not play around with sampling.

Mr. MOLLOHAN. Mr. Chairman, I yield 1¾ minutes to the gentlewoman from Florida [Mrs. MEEK].

(Mrs. MEEK of Florida asked and was given permission to revise and extend her remarks.)

Mrs. MEEK of Florida. Mr. Chairman, first of all, I do not trust statistics any more than the rest of my colleagues. But I trust even less the belief that everyone is going to be counted fairly.

If we look at the history of this, we have never had an accurate count. The under-count has been shown more in African Americans than it has in any other group. Do we want this repeated? Then we are sending a message that we do not want a fair census count.

This country does not look like it did in 1990. You better look around and see that it is different. You see more minorities. There will be even more. So you may as well learn that you have to count them accurately. You cannot count them accurately by the kinds of enumeration that you are doing or that you expect to do.

So it tells me that the issue is that because you know there are more of them than there are of you, that you do not want an accurate count. They are going to be there. They are going to be under the bridges. They are going to be in the homeless shelters. There are going to be people who do not return those things to the census.

All I am saying to you is, it is fruitless, it is crazy, it is a waste of money, but you would rather do that politically and for power than to go to a sampling which the Mollohan amendment is asking us to do. You would rather take that useless method because you do not want to count everybody. You want to go back to the time when there was a serious undercount.

It will repeat itself. It was in 1990, as you see from this chart. It is going to be in the year 2000, because you are going to insist on counting every head.

Mr. Chairman, they cannot enumerate and count every head because they are not going under the bridges, they are not going on the highways and byways of this country to find these little people and count them. If that is the way you want it, then you will not support the Mollohan amendment.

I support the Mollohan amendment because it is fair. African-Americans will be counted. It has got to be done.

Mr. HASTERT. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Illinois [Mr. HYDE].

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Chairman, this is a fascinating debate. I listened to my good friend, the gentleman from Texas [Mr. STENHOLM], talk about the scientists. I do not think you have to be a scientist, rocket or otherwise, to read the plain language of the Constitution: ''The actual enumeration,'' those are not tough words, ''shall be made within 3 years after the first meeting of the Congress.''

And then a constitutional scholar, the gentleman from North Carolina [Mr. WATT], brought in the entire text. He said, ''in such a manner as they,'' meaning Congress, ''shall by law direct.''

Well, you cannot by law amend the Constitution. You cannot pass a statute and erase the first three words of article I, ''the actual enumeration.''

It is a stretch to ask us to trust the sampling of the population to an administration that has shown, at best, a reckless disregard for the letter and the spirit of the law.

It goes beyond the Constitution. We have a statute. Title 13, section 195, says, ''Except for the determination of population for purposes of apportionment of Representatives in Congress among the several States, the secretary shall, if he considers it feasible, authorize the use of the statistical method.'' It specifically excludes counting by sample, by guess, a determination, ''for the purposes of apportionment.''

We want to count everybody. If they are under the bridges, go down there and count them. You are getting paid to count them. Why is that less accurate than guessing how many people are under the bridge? Your administration does not exactly wear a T-shirt saying, ''trust me,'' and engender an awful lot of confidence to have you count how many people there are and where they are and what the districts shall be in the next 10 years.

The CHAIRMAN. The Committee will rise informally in order that the House may receive a message.

The SPEAKER pro tempore (Mr. MILLER of Florida) assumed the chair.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Lundregan, one of its clerks, announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2203) ''An Act making appropriations for energy and water development for the fiscal year ending September 30, 1998, and for other purposes.''

The SPEAKER pro tempore. The Committee will resume its sitting.

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT, 1998

The Committee resumed its sitting.

Mr. MOLLOHAN. Mr. Chairman, I yield such time as she may consume to the gentlewoman from Texas [Ms. JACKSON-LEE].

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Chairman, because sampling equals one vote and good science and good constitutional support, I rise to support the Mollohan-Shays amendment.

Mr. Chairman, I rise in support of the Mollohan-Shays amendment to H.R. 2267, the Commerce-Justice-State appropriations. This amendment if adopted would add language prohibiting use of any 1998 funds to make irreversible plans or preparations for the use of sampling or any other statistical method, including statistical adjustment, in taking the census for purposes of congressional apportionment. This same language is included in the Senate-passed version of the bill.

This amendment would also create a Board of Observers for a Fair and Accurate Census, with the function of observing and monitoring all aspects of the preparation and execution of Census 2000, to determine whether the process has been manipulated—through sampling, statistical adjustments, or otherwise—in any way that biases the results in favor of any geographic region, population group, or political party.