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Comment

71 LIES, DAMN LIES AND STATISTICS [FNd]: DISPELLING SOME MYTHS SURROUNDING the united states **census*

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INTRODUCTION

In those days a decree went out from Caesar Augustus that all the world should be enrolled. This was the first enrollment, when Quirinius was governor of Syria. And all went to be enrolled, each to his own city. And Joseph also went up from Galilee, from the city of Nazareth, to Judea, to the city of David, which is called Bethlehem, because he was of the house and lineage of David, to be enrolled with Mary, his betrothed, who was with child. And while they were there, the time came for her to be delivered. And she gave birth to her first-born son and wrapped him in swaddling cloths, and laid him in a manger, because there was not place for them in the inn. [FN1]

Ever since that most famous census, nearly 2,000 years ago, [FN2] leaders of nations have been trying to count their people with varying degrees of success. [FN3] Surprisingly, when the United States conducted its first census in 1790, it was the first country in “modern” times to attempt to count its people. [FN4] In April of 1990, the United States will take its twentieth census, completing *72 a string of 200 years of uninterrupted periodic counts, a feat unparalleled in the history of civilization. [FN5]

Census taking has never been an easily accomplished task, however. Although it has never been interrupted by war or other national events such as the Great Depression, it has been plagued with problems from the beginning. The first census counted over 3,890,000 people, [FN6] but it was well short of the expected count of four million. [FN7] Before the census was completed, President Washington wrote:

[T]he real number will greatly exceed the official return, because, from religious scruples, some would not give in their lists; from apprehension that it was intended as the foundation of a tax, others concealed or diminished theirs; and from the indolence of the mass and want of activity in many of the deputy enumerators, numbers are omitted. [FN8]

Actually, the first census was probably fairly accurate, while the expectations of the President were too high. [FN9] However, it can hardly be argued that the Census counted everyone. The average density of the country was only 4.5 persons per square *73 mile, [FN10] and many Americans were illiterate. [FN11] Hence, the chances of the federal marshals counting everyone were not good from the beginning.

Yet, even today, in our “high-tech” society, we have trouble counting everyone. [FN12] The 1980 Census was plagued by lawsuits charging that the Census Bureau [FN13] had missed millions of Americans, most of them minorities or aliens. [FN14] The plaintiffs argued *74 that these “undercounts” would harm them not only

in their political representation, but would also result in the loss of billions of dollars from the federal government, since many programs allocated funds through formulas that took population into account. [FN15] Indeed, by 1988, New York City had already filed suit against the U.S. Department of Commerce, [FN16] seeking “to compel an accurate count of inner-city residents in the 1990 census.” [FN17]

The Census Bureau, meanwhile, admits that there is an undercounting problem, [FN18] but it argues that it is powerless to adjust the figures. [FN19] Moreover, even if the Bureau had the power to adjust its data to reflect the undercount, there is no guarantee that the revised figure would be accurate. If the enumeration were to be adjusted by using a formula that was not “statistically defensible,” [FN20] the true population count would *75 be further distorted. [FN21] Even more problematic is finding a remedy to accord relief to the complaining cities and states. With the start of the nation’s bicentennial census slated for April 1, 1990, the battles are just heating up.

This Comment will take a look at the census in history to survey the problems it has endured. It will then focus on the problems with recent census counts including the upcoming enumeration. Further emphasis will be placed on the question of whether the Constitution or the Census Act allows the Census Bureau to adjust the headcount figures for apportionment or taxation purposes. Finally, this Comment will analyze whether the battle over the undercount is worthwhile from a monetary perspective. In other words, will cities really lose billions of dollars in federal funding through undercounts in the Census?

This author argues that the dollar loss from undercounting is minimal, and that the only reason for cities to demand that an adjustment be made to render a more accurate census count is one that is not allowed by the Census Act and is rarely mentioned by the attorneys for the cities: fair political representation. [FN22]

*76 I. A HISTORY OF THE AMERICAN CENSUS

The census clause in Article I, Section 2 of the United States Constitution came about after some tense negotiating and hard lobbying by the delegates to the Constitutional convention. [FN23] Delegates representing the large states wanted more representation in the government. [FN24] Those states with large slave populations wanted slaves to count as full citizens for purposes of representation. [FN25] Along with the famous three-fifths compromise [FN26] came another important compromise: that direct taxation would be apportioned according to population. [FN27] James *77 Madison explained the importance of this compromise in FEDERALIST NO. 54, when he stated:

In one respect, the establishment of a common measure for representation and taxation will have a very salutary effect. As the accuracy of the census to be obtained by the Congress will necessarily depend, in a considerable degree, on the disposition, if not on the cooperation of the States, it is of great importance that the States should feel as little bias as possible to swell or to reduce the amount of their numbers. Were their share of representation alone to be governed by this rule, they would have an interest in exaggerating their inhabitants. Were the rule to decide their share of taxation alone, a contrary temptation would prevail. By extending the rule to both objects, the States will have opposite interests, which will control and balance each other and produce the requisite impartiality. [FN28]

Thus, with the Constitutional authority in place, Congress went about providing the statutory authority to carry out the Constitution’s demands. [FN29] In 1889, Congress created a temporary Census Office to direct the taking of the 1890 census, [FN30] which it finally made permanent in 1902. [FN31] However, as it turned out, Madison’s assessment of the balancing of interests would soon become irrelevant as population ceased to be the

basis for taxing the states, but instead became the basis for allocating money to the states. [FN32]

***78** Since the federal government started handing money out to the states and using population as part of its formulas for allocating that money, states have been fighting over the counts of the census. [FN33] In 1980, the Census Bureau counted fifty-four suits challenging the accuracy of the census and demanding that the Bureau adjust its figures to accommodate what the plaintiffs saw as an enormous undercount of minorities. [FN34] The Census Bureau itself estimated a 0.4% undercount in 1980. [FN35] If the Bureau's figures are accurate, 1980 was a great improvement over previous counts. For example, the Bureau estimated the rate of undercounting to be 2.7% in 1960, and 2.5% in 1970. [FN36] This improvement, however, was not good enough for the cities and they filed suits en masse. The most famous of the 1980 suits, and the most important suits, legally, were *Young v. Klutznick* [FN37] and *Carey v. Klutznick*. [FN38]

II. THE 1980 LEGAL BATTLES

A. Background

The first case to render a judgment in the census controversy was the *Young* case. [FN39] In *Young*, the City of Detroit sought to require the Census Bureau to adjust its figures to render ***79** a more accurate count. [FN40] The city argued that the fourteenth amendment as well as the census clause itself commanded an accurate census count. [FN41] Furthermore, the city alleged that unless the Bureau adjusted its figures to compensate for the undercount, people living in areas with large minority populations would be deprived of their right to equal representation in Congress, and those people would also lose substantial amounts of money through federal programs that are tied, in some form, to population counts. [FN42]

***80** In rendering his opinion, Judge Gilmore stated, “[T]he necessity for an accurate population count among and within states is inexorably tied to fair apportionment of congressional seats. That is what this case is all about. The issue is as simple as that.” [FN43] The Judge then went on to state four principals of law that have been hotly debated among scholars: 1) that there were adequate methods for adjusting the census data to give a statistically defensible count; [FN44] 2) the use of such adjusted ***81** data was not prohibited by either the Constitution or the census act; [FN45] 3) the Bureau was required to adjust its figures to remedy the undercount of minorities; [FN46] and 4) the time limits for reporting the results of the census to the President were directory rather than mandatory. [FN47]

In *Carey*, New York City sued to enjoin the Bureau from releasing the census results until after they were adjusted for the undercount. [FN48] The court granted the city's prayer for relief and further held that the census clause mandated that the enumeration accurately reflect the true population count for each state. [FN49]

The Bureau, in both *Young* and *Carey*, admitted that there was an undercount problem and that it was more severe among minorities than among whites, and worse among women than men. [FN50] However, the Bureau argued that the Constitution ***82** demanded a “head count” for apportionment purposes and that it could not adjust the figures before reporting them to the President. [FN51] It further argued that even if it were constitutionally and statutorily permitted to substitute adjusted figures for the actual count, there is no statistically defensible way to do so. [FN52] While the Bureau recognized that it would be possible to estimate the number of people it missed on a national level and break that number down by sex, race or age, it argued that it would not be possible to do so on a state-by-state basis. [FN53]

However, the Bureau did not have to pursue these points as the appellate courts struck down both rulings. The Sixth Circuit Court of Appeals reversed the Young case, stating that the city lacked standing to sue. [FN54] The appeals court held that the city alleged only that the undercount would create inequity in distributing representatives within the state of Michigan. [FN55] Since the court held that the Constitution does not require the states to use census figures for reapportioning their state houses, there was no connection between the injury claimed and the remedy proposed. [FN56]

In the Carey case, the United States Court of Appeals for the Second Circuit remanded the case to the district court to allow other states a chance to join in the suit. [FN57] The court reasoned that New York would only gain a seat in the House *83 of Representatives at the expense of another state and, therefore, the interests of all those states that could lose a House seat would have to be represented. [FN58] The suit was ultimately dropped as it became moot for apportionment purposes. [FN59]

B. Analysis of the Rulings

Assuming that the suits filed in anticipation of the 1990 census could meet the standing requirements, [FN60] the courts would again be faced with the issues underlying the undercount controversy: Does either the Constitution or the Census Act prohibit the Commerce Department from adjusting its figures to correct an undercount before certifying the results to the President? Perhaps even more importantly, does either the Constitution or the Census Act require Commerce to adjust its figures? [FN61] The Young and Carey cases both answered “no” to the first question, and “yes” to the second. [FN62]

*84 The reasoning used by the courts was two-fold: first, the Constitution has no language explicitly forbidding the use of adjusted statistics: and second, the Bureau has actually adjusted its figures for several periodic censuses. [FN63] As for the first argument, the Young court was correct in stating that “the framers wanted, as much as possible, an accurate count because the count was to be used for the determination of Congressional apportionment.” [FN64] However, when the court went on to say that since the Bureau must include convicts, Nazis, and Communists in the count, it is also required to count those who have not been counted, [FN65] it stretched the argument a bit beyond reason. It is true that the Bureau must count everyone regardless of political affiliation, crimes committed, or any other “undesirable” characteristic that the person may have. [FN66] *85 However, it is impossible to count every person, and to lump “undesirable persons” into a category with “unidentifiable persons,” is careless legal reasoning.

The second line of reasoning employed by the courts was that the Bureau had already adjusted its data in other censuses and, hence, could not now say that the Constitution would not permit adjustment. [FN67] Such reasoning is legally infirm. To argue that, because a governmental agency has been doing things in violation of the Constitution for so long, it must now be constitutional, is not only erroneous, it is dangerous. Moreover, even if one were to accept such a preposterous statement, the facts cited by the Young court do not support its reasoning. The court cites the fact that the Bureau does not require every person to fill out a census questionnaire, but instead solicits information only from heads of households. [FN68] Furthermore, the court states that the use of forms that are mailed to the recipients, filled out, and mailed back, is another example of how the census conducts more than a simple headcount. [FN69] While it is true that such techniques are not head counts in the purest sense of the word, it can hardly be argued that they are sampling techniques. Even though the head of the household may fill out a questionnaire and mail it back to the Bureau, each person is still physically accounted for, and the Bureau is not merely sampling a few persons and formulating a number based on the responses it receives. On the contrary, the “mail-out/mail-back” program has improved the efficiency of the

census tremendously since it was introduced in 1960. [FN70]

However flawed the reasoning of the courts, they are correct that the Constitution does not prohibit adjusting the counts to reflect the true population. The census was proposed as *86 a way to keep states honest in their population counts. [FN71] There is no way the founders could have known about the sophisticated sampling techniques used today. [FN72] Since the intent of the framers was to gain an accurate count of the people for use in apportioning seats in the House of Representatives, and for use in direct taxation, it should not be hard to fathom an intent to use the best means available for obtaining an accurate count.

Although the Constitution does not prohibit, and may actually mandate, adjusting the population count to reflect the true population, the courts erred when they held that the Census Act permitted such adjustments. The Act provides, “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’ in carrying out the provisions of this title.” [FN73] The Young court read this as saying that “a ll that § 195 does is prohibit the use of figures derived solely by statistical techniques. It does not prohibit the use of statistics in addition to more traditional measuring tools to arrive at a more accurate population count.” [FN74] Judge Gilmore based his twisted reasoning on the opinion of Judge Guy, who had ruled on the Bureau's motion to dismiss. However, Judge Guy offered neither support nor analysis for his conclusions. [FN75] Such legal rulings serve *87 only to confuse the issues and add no credibility to the precedent being set.

It is amazing to this author how two judges could so mutilate the clear wording of the statute to arrive at what they think is the correct result. Section 195 very explicitly says—and Congress knew exactly what it said prior to amending it in 1975 [FN76]—that statistical manipulation of census enumerations is allowed except for “purposes of apportionment.” [FN77] Hence, since Congress has not allowed for adjustment of the data for apportionment of the House of Representatives, a city or state could only have one possible standing argument with which to challenge the census: that the city or state will lose funds that are distributed on the basis of census data.

III. THE FUNDING PROCESS

Money is the main reason cities and states await the census results with eager anticipation and then challenge the counts that are not to their liking. [FN78] Many federal programs are *88 administered through the use of formulas that take population into account. Hence, cities that currently receive approximately \$200 per person in federal aid, [FN79] naturally expect to receive the same amount for every person they can add back to the enumerations. However, “no federal program that makes grants to localities uses population as the sole variable.” [FN80] As a matter of fact, very few programs that transfer money from the federal government to cities use population in their formulas. [FN81] Moreover, those programs that do use population in their formulas are “fixed-sum” programs where the federal government allocates a fixed amount of money to cities on the basis of their population. [FN82] Hence, the assumption that New York would gain \$200 for each person added to its census count, would only be true if another city lost an equal number of persons. However, if Detroit added one person to its count for every person added by New York, the percentage of increase in relation to each other would remain stable, and neither city would gain. Thus, since there is a fixed amount of money to disburse, each city would gain only if other cities lost. [FN83]

So far, the assumption has been that those programs that allocate funds must do so on the basis of census figures. However, such an assumption is incorrect. Most federal programs that use population in their funding for-

mulas do not require the use of census data. [FN84] Moreover, even if the programs did require the use of census data, it should be reiterated *89 that funding amounts could only go up incrementally, because for each dollar gained by a city, one must be lost by another city or a combination of other cities.

In an in-depth analysis of the effect the census has on federal aid to cities, Arthur Maurice and Richard Nathan examined the three largest programs that use population as part of their formula—Community Development Block Grant (CDBG), Urban Mass Transportation Act (UMTA), and General Revenue Sharing (GRS)—to determine how much each city would gain if the undercount were figured into the final census enumeration. [FN85] What they came up with was no less than astonishing. The city of Detroit would actually lose \$3.90 in the CDBG program for every person added to the census count; it would gain \$0.80 in the UMTA program; and it would gain \$16.00 in GRS, for a total gain of \$12.90 per person, [FN86] not even close to the \$200 per person expected. [FN87] *90 New York's numbers were very similar: a \$5.30 loss in CDBG, a \$0.20 gain in UMTA, and a \$9.40 gain in GRS, for a total gain of \$4.30. [FN88] The reason New York and Detroit would make only slight gains is because other cities would also add more minorities by using the undercount percentages. [FN89] Since these numbers are based on 1980 revenues and expenditures, the net gains would be even less today with the near abolition of General Revenue Sharing during the Reagan Administration years. [FN90] Since some programs, such as the Urban Development Action Grant (UDAG), actually use population loss as a factor in issuing grants, there may perhaps be a net loss of funds for every person added by use of an undercount adjustment. [FN91] All things remaining equal, the city that loses more people ends up with more federal funding from the UDAG program.

The analysis of how much a city stands to gain is important not only from the point of view of whether a city should pursue a claim against the Bureau, but also to determine if a city can even bring a claim. If a city stands to lose money through adjustment for the undercount, it should have no *91 standing to sue other than for unequal representation in Congress. [FN92]

CONCLUSION

The American census is an institution unlike any other in the world. However, the inability to count each person in a country so large and so mobile has caused great concern to larger cities in the past few decades. Those cities argue that unless the Census Bureau adjusts its enumeration to reflect the large amount of minorities that it missed while taking the census, they will lose their right to equal representation in Congress and, more importantly, they will lose needed federal funding that is based, in part, on population.

However, the Census Bureau is powerless, absent new authorization from Congress, to adjust its count for purposes of representation in the House of Representatives. Moreover, the reliance of the cities on the undercount to increase federal funding for their cities is exaggerated, if not misplaced. The resulting funds from adjustment of the census enumeration would do little for the complaining cities, and could actually result in decreased funding for those cities. Instead of challenging the census count, the cities would do better to lobby Congress for new authorization for the Census Bureau to adjust its figures before presenting them to the President for use in redistricting. Once that is accomplished, the cities would do well to push for a change in the way federal funding is allocated. Perhaps cities that need the aid could apply for it on a project-by-project basis to ensure that it is being spent properly. Arguably, cities should be more careful with the money they do receive—they might discover that they do not need any more money. One thing is certain: the Census Bureau keeps trying to improve its techniques to ensure an accurate and fair count. It should be up to the Department of

Commerce*92 and Congress to see that this continues until every American can be counted or accounted for. What the Bureau does not need is the interference of courts that are ill-equipped and ill-trained to understand the magnitude of the periodic census.

[FNd] With apologies to Mark Twain. This Comment is dedicated to Lisa. Without her patience and understanding through three long years, law school would have been only a drudgery. Her moral support and laughter helped melt away the days of endless study into a rewarding tenure at Detroit College of Law. I would also like to thank my roommates, Eric and Ed, who made law school and law review full of good memories.

[FN1]. Luke, 2:1-7 (New Oxford Annotated Bible, Revised Standard Version).

[FN2]. Scholars place the date of Caesar Augustus's census at 6-5 B.C. See, Luke, 2:1-7, (New Oxford Annotated Bible, Revised Standard Edition); See also H. ALTERMAN, COUNTING PEOPLE: THE CENSUS IN HISTORY 31 (1969).

[FN3]. The census in supra note 1 was actually not the first census taken. Not only were censuses conducted in Old Testament times — see, e.g., Exodus 30:11-14, 38:25-26, and Numbers 1:2-3, 19 — but it is believed that the Babylonians, the Egyptians and the Ancient Chinese were taking enumerations of their people as far back as 2500 B.C. See H. ALTERMAN, supra note 2.

[FN4]. H. ALTERMAN, supra note 2, at 164. Although England would frequently require its colonial governors to count the American population, it would be 1801 before Great Britain would attempt an enumeration of its own people. *Id.* at 164, 174.

[FN5]. *Id.* at 164-65. The taking of the first census was not a novel idea to the new Americans. Although there had never been a nationwide enumeration prior to 1790, 10 of the early American states had taken at least one census. By 1790, these states had conducted 38 censuses, with New York enumerating most often (11 times), and Rhode Island counting second most often (seven times). *Id.* at 167.

[FN6]. H. ALTERMAN, supra note 2, at 201. Interestingly, the census categorized the figures by sex for free white persons, but not for slaves. The first count revealed 807,094 “Free white males of 16 years and upward,” 791,850 “Free white males under 16 years,” (totaling 1,598,944 free white males), 1,541,263 “Free white females,” 59,150 “other free persons,” and 694,280 slaves. *Id.*

[FN7]. H. ALTERMAN, supra note 2, at 204. Secretary of State Thomas Jefferson expressed, in a private letter, his expectations of a total of four to five million people. After the returns were counted, Jefferson wrote to William Carmichael and projected that, if allowances were made “for omissions, which we know to have been very great, we may safely say we are above four millions [sic].” *Id.*

[FN8]. H. ALTERMAN, supra note 2, at 205. The fine for not cooperating with the federal marshals charged with overseeing the census was \$20, a large sum of money in those days. *Id.* at 195.

[FN9]. H. ALTERMAN, supra note 2, at 205. Most historians believe that Washington's expectations were unrealistic and were the result of the exaggerated hopes of a new nation. Secretary of State Jefferson was concerned that a population count lower than four million would result in a poor foreign opinion. *Id.* at 204-05.

[FN10]. H. ALTERMAN, supra note 2, at 177. “An area that contained as few as two people per square mile

was considered ‘inhabited.’” Id.

[FN11]. H. ALTERMAN, *supra* note 2, at 312. In 1870, the census asked its first question about literacy. The results showed that 20% of the population was illiterate, just five years after the end of the civil war. Id.

[FN12]. In the early day of the census, the enumerators' tabulations had to be counted by hand, a formidable task to say the least. However, Herman Hollerith would change that and make history at the same time. His story is well worth repeating here:

Herman Hollerith (1860-1929), was born in Buffalo, New York to George and Franciska Hollerith. He graduated from the School of Mines at Columbia University in 1879, and immediately went to work in the Census of 1880. While there, he met Dr. J.S. Billings, who, it is generally agreed, suggested the idea of a machine to carry out the mechanical task of tabulating information that until then had to be done by hand. Hollerith decided the idea was practical, and went to work on it.

In January of 1889, Hollerith was issued three patents. These were for a set of tabulating machines that would not only record information using holes punched in cards, but also count the entries. The Hollerith Electric Tabulating System, as it was then called, subsequently won a Bureau of the Census competition against two other methods of tabulation, and thus was selected for use in the Census of 1890.

In 1896, Hollerith organized the Tabulating Machine Company, Incorporated, to manufacture the machines and the cards that the system employed. In 1911, this company was consolidated with two other firms to become the Computing-Tabulating-Recording Company, later reorganized and renamed as the International Business Machines Corporation (IBM).

C. KAPLIN AND T. VANVALEY, CENSUS '80: CONTINUING THE FACTFINDER TRADITION, U.S. Bureau of the Census 18 (footnotes omitted).

[FN13]. The Census Bureau was created by the Census Act, 13 U.S.C. § 141 (1976).

[FN14]. The two major cases that went the furthest were *Young v. Klutznick*, 497 F.Supp. 1318 (E.D. Mich. 1980), rev'd, 652 F.2d 617 (6th Cir. 1981), cert. denied, 455 U.S. 939 (1982), and *Carey v. Klutznick*, 508 F.Supp. 404 (S.D.N.Y. 1980), rev'd 653 F.2d 732 (2d Cir. 1981) cert. denied, 455 U.S. 999 (1982). Carey was actually decided in three separate opinions between August and December of 1980. 508 F.Supp. 404 (S.D.N.Y. 1980), 508 F.Supp. 416 (S.D.N.Y. 1980) and 508 F.Supp. 420 (S.D.N.Y. 1980). For purposes of clarity they will be referred to as Carey I, Carey II, and Carey III, respectively. Both Young and Carey will be discussed at length *infra*. For a listing of the 47 challenges to the 1980 census that had been filed as of June 21, 1981, see *Carey v. Klutznick*, 653 F.2d at 735 n.10. Note also that, in his Note, David Tachau counts 49 census challenges listed in Carey. Note, The Courts and the 1980 Census Challenges: Tailoring Rights to Fit Remedies, 15 U. MICH. J.L. REF. 153, 153 n.3 (1981). Perhaps Mr. Tachau was making a statistical adjustment to his own perceived undercount of census challenges.

[FN15]. See *Carey I*, 508 F.Supp. at 408; *Young*, 497 F.Supp. at 1321.

[FN16]. The Census Bureau is an agency within the U.S. Department of Commerce. 13 U.S.C. § 2 (1976).

[FN17]. Wise, City Sues to Avert 1990 Census Undercount: Claim Against Commerce Dept. Officials Seeks to Prevent Loss of Billions in Federal, State Funds, N.Y.L.J. Nov. 4, 1988 at 1, col. 3. The suit was joined by the states of New York and California, as well as the city of Los Angeles. Also joining the suit were Chicago, Dade

County in Florida (which contains Miami), and the National Association for the Advancement of Colored People. L.A. Daily J., Nov. 4, 1988, at 1, col. 4. According to city officials, the City of Detroit had also joined the suit. Interview with Mark Schultz, City of Detroit, Planning Dept. (Jan. 3, 1990). For the disposition of the suit, see *infra* note 61.

[FN18]. *Young*, 497 F.Supp. at 1321. The Census Bureau estimates that it missed nearly 10.2 million people in the 1970 census. While this represented only five percent of the total population, the Bureau estimates that it actually missed 1.9% of all white persons and 7.7% of all Black persons. *Id.*

[FN19]. See *Carey I*, 508 F.Supp. at 414; *Young*, 497 F.Supp. at 1323. The Bureau's argument is two-fold: First, the Constitution empowers the Bureau only to take a headcount; and second, § 195 of the Census Act prohibits the Bureau from making statistical adjustments. *Carey I*, 508 F.Supp. at 414.

[FN20]. “Statistically defensible” is a term used by the Census Bureau to mean that any adjustment in the census data would need to be backed up by empirical data. In 1980, the Bureau argued that “[s]ince the present measurement of the undercount is unreliable even at the national level, no method of adjusting for the undercount is statistically defensible for 1980.” *Carey III*, 508 F.Supp. at 429 (citing *Defendants' Ex. 23* at 3). The Bureau came to this conclusion after the *Young* court had ordered the Census Bureau to prepare a report on the feasibility of adjusting the population count. The Bureau defined “statistical defensibility” by setting forth seven prerequisites to be used in producing a statistically defensible adjustment:

(1) appropriateness to use to be made of the results; (2) provision of measures of uncertainty; (3) listing and verification of assumptions; demonstration of robustness; (4) description of data sources, reliability and limitations; (5) reproductibility; (6) timeliness; (7) least cost for given degree of uncertainty. *Carey III*, 508 F.Supp. at 429 n.8 (citing *Defendants' Ex. 23* at 4-9).

[FN21]. *Carey III*, 508 F.Supp. at 429 (S.D.N.Y. 1980). The Census Bureau argued that its estimates of the undercount on the national level were tenuous at best. Furthermore, the Bureau argued that even if it had a “statistically defensible” method of making adjustments on a national level, there would be no way to accurately determine the undercount at local levels. *Id.*

[FN22]. Some may question whether it would be worth all the trouble and expense of suing the Census Bureau to adjust its figures merely for apportionment purposes. This question takes on even more relevance in light of a report published by the non-profit research group, Population Reference Bureau, which concluded:

[A]n adjustment for the expected minority undercount would have little or no impact on reapportionment. ‘It is unlikely that an undercount for minorities would swing no more than a couple of seats at best,’ says William P. O’Hare, director of policy studies for the organization.

But O’Hare does note that while the interstate change may be small, there could be a significant intrastate impact, giving urban areas in a state a boost against faster-growing suburbs in redistricting. This could occur in Michigan, for example, where two black-majority districts in Detroit have had significant population losses. An adjustment might not spare the state its expected loss of two House seats, but an adjusted count in Detroit might bolster efforts to maintain those two black districts.

Simple Question, Tough Answer: Whom Should Census Count?, CONG. Q., Aug. 12, 1989 at 2146.

[FN23]. See H. ALTERMAN, *supra* note 2, at 183-84. At one point, after the delegates to the Constitutional Convention had agreed to use the census as the basis for apportioning representatives, a committee passed an amendment providing that only white inhabitants would be counted. When this was reported to the full conven-

tion, the entire resolution was rejected, and the Convention nearly broke up. Only the quick thinking by Pennsylvania's Governor Morris, who proposed to link taxation to representation, prevented the convention from being a failure. *Id.* at 185-86.

[FN24]. See H. ALTERMAN, *supra* note 2, at 183-84.

[FN25]. See H. ALTERMAN, *supra* note 2, at 183-84. The number of slaves in Maryland (103,036), Virginia (292,627), North Carolina (100,572), and South Carolina (107,094) far out-numbered the slaves in the rest of the country (91,035 total for the other nine original states). *Id.* at 201.

[FN26]. The original enumeration clause of the Constitution read:

Representatives . . . shall be apportioned among the several States . . . according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons . . . excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct.

U.S. CONST. art. I, § 2, cl. 3 (emphasis added). After the Civil War, the fourteenth amendment eliminated the provision for counting slaves as “three fifths of all other Persons.” *U.S. CONST. amend. XIV, § 2*.

[FN27]. H. ALTERMAN, *supra* note 2, at 186.

[FN28]. THE FEDERALIST NO. 54, at 340-41 (J. Madison) (C. Rossiter ed. 1961).

[FN29]. In 1790, Congress enacted Act of Mar. 1, 1790, I Stat. 101, which authorized the first census.

[FN30]. Act of Mar. 1, 1889, *ch. 319, § 2, 25 Stat.* 760.

[FN31]. Act of Mar. 6, 1902, *ch. 139, § 3, 32 Stat.* 51.

[FN32]. This is due in large measure to the sixteenth amendment, which permits Congress to levy an income tax. That amendment, which overcomes the requirement in article 1, § 2 that direct taxation be in proportion to the population, and the requirement in article 1, § 8 that indirect taxes be uniform throughout all the states, reads, “The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.” *U.S. CONST. amend. XVI*.

Shortly after the amendment's ratification in 1913, the income tax replaced tariffs as the federal government's principal source of revenue. The individual income tax proved to be such a success that Congress soon expanded the scope of the sixteenth amendment to include corporate income taxes and the social security tax. By World War II, federal taxes had raised so much money that the federal government was using them to regulate the economy and to fund social programs, which resulted in revenue sharing programs and other social spending payments made back to the state. See generally WEBSTER ENCYCLOPEDIA 890 (One Volume Edition 1982).

[FN33]. One especially nasty fight broke out in Minnesota in 1890. Concerned that census workers in Minneapolis were cheating on their census counts, officials in St. Paul kidnapped the enumerators from Minneapolis and charged them with padding their counts. Minneapolis officials responded in kind. A. Maurice and R. Nathan, *The Census Undercount: Effects on Federal Aid to Cities*, 17 *URBAN AFFAIRS QUARTERLY* 251 (1982).

[FN34]. ANDERSON, *THE AMERICAN CENSUS: A SOCIAL HISTORY* 230 (1988).

[FN35]. *Carey III*, 508 F.Supp. 426 (1980). Since it is impossible to determine the actual population of the United States, all estimates of the undercount are merely that—estimates. The Bureau uses the term “measured undercount” when giving its estimates of the population. The “measured undercount” is determined by subtracting the estimated overcount from the estimated undercount. *Id.* at 427.

[FN36]. *Id.* at 426.

[FN37]. 497 F.Supp. 1318 (E.D. Mich. 1980).

[FN38]. 508 F.Supp. 404 (S.D.N.Y. 1980).

[FN39]. *Young*, 497 F.Supp. 1318 (E.D. Mich. 1980). The *Young* case was decided on Sept. 25, 1980, six days prior to the decision in *Carey I*.

[FN40]. *Young*, 497 F.Supp. at 1321. While the City of Detroit argued that the decennial population count did not accurately reflect the true population of the states and their political sub-units, some think that the city's claims, while true, were much exaggerated. For a rather poignant and skeptical view of the Detroit undercount problem, see C. Moss, *When in Doubt, Use the “Undercount”*, DETROIT NEWS, May 6, 1989, at 18, col. 4. Mr. Moss argues that the city may be exaggerating the size of its undercount since it “has bled population faster than a shark torn swimmer. If the head count dips below one million, Detroit will lose lots of state benefits.” *Id.*

[FN41]. *Young*, 497 F.Supp. at 1331.

[FN42]. *Id.* at 1321. It is interesting to note that Detroit did not allege the harmful effects undercounting would bring should the city fall below one million. Just recently, the Census Bureau announced that San Diego had passed Detroit to be come the nation's sixth largest city. GRAND RAPIDS PRESS, Nov. 22, 1989 at A1, col. 5. In making its announcement, the Bureau projected Detroit's 1988 population at 1,035,920, which was down nearly 50,000 from the Bureau's 1986 projection. *Id.* Should the trend continue, Detroit would fall below the one million mark in 1990. This would be devastating for the city, not for the federal funding it could lose, nor for any loss of representation in Congress, but for the effect it could have on state legislation passed specifically for Detroit.

The Michigan Constitution prohibits the state legislature from passing local legislation in the absence of approval by two-thirds of the legislature, as well as a majority of the voters in the district to be affected by the legislation. MICH. CONST. art. 4, § 29. However, the Michigan courts have ruled that the scope of a piece of legislation may be limited geographically by including a population classification, so long as the population classification “has a reasonable relation to the purpose of the statute and the statute applies whenever the population classification is met.” *Lucas v. Bd. of County Rd. Comm'rs*, 131 Mich. App. 642, 652, 348 N.W.2d 660, 665 (1984) (upholding constitutionality of state statute authorizing a three-member road commission to be appointed by the elected county executive in counties of 1,500,000 or more people, which affected Wayne County, within which Detroit is located). Cf. *Avis Rent-A-Car System v. City of Romulus*, 65 Mich. App. 119, 237 N.W.2d 209 (1975).

Important statutes affecting Detroit, due to population classification provisions, include legislation requiring a concurring vote of two-thirds of the zoning board of appeals to overturn the determination of a zoning appeals administrator, as opposed to a simple majority for cities with populations of less than 1,000,000 MICH. COMP. LAWS ANN. § 125.585 (West 1986); and legislation allowing cities with populations of 1,000,000 or more to

impose a “utility users tax” to be used to hire or retain police officers. [MICH. COMP. LAWS ANN. § 141.802 \(West Supp. 1989\)](#). Note that Grand Rapids is Michigan's second largest city, with an estimated population of 185,370. [GRAND RAPIDS PRESS](#), Nov. 22, 1989, at A1, col. 5.

It should be further noted that Detroit is not the only city in Michigan that would be detrimentally affected by a population count under one million. In 1989, Senator Dick Posthumus, who represents the greater Grand Rapids area, introduced a bill which would allow two or more local governmental units to combine to form a “metropolitan council.” Such a council would have the power to levy property taxes; issue bonds; construct public works projects such as sewer, water and waste disposal facilities; finance parks and other recreational facilities; provide for transportation needs, including airports; and promote higher education improvements. Act of Jan. 2, 1990, Pub. Act 292, 1989 §§ 5, 19. Since many legislators from the metro Detroit area were opposed to the bill, the Senate included a provision making the act applicable only to metropolitan statistical areas (a boundary established by the census bureau for counting purposes) with a population of less than one million, as determined by the United States Department of Commerce. *Id.* at § 3(f). Should Detroit fall below the one million mark, there could be very interesting consequences for the city.

[\[FN43\]](#). [Young](#), 497 F.Supp. at 1323.

[\[FN44\]](#). *Id.* at 1331. One of the so called “adequate methods” proposed by the judge is the “simple synthetic method.” This method merely takes, for example, the number of blacks counted and multiplies that number by the undercount rate for blacks. *Id.* at 1329, 1331. For instance, if 1000 black persons are counted in an area and the undercount rate is 7.7% for blacks, the adjusted figure becomes $1000 + (1000 \times .077)$, or 1077. This method is necessarily flawed.

By using the simple synthetic method, an area that has a high concentration of blacks, but also a low undercount rate, actually benefits more than an area with a high concentration of blacks and a high undercount rate. To illustrate this, assume Area A has a Black population of 10,000 and a 0.0% undercount. By contrast, Area B also has a Black population of 10,000, but it has an undercount rate of 20% (hence, only 8,000 people are counted). By using the simple synthetic method, one would multiply the population counts by the total undercount of 10%. Thus, Area A adds 10%, or 1,000 people (people that do not actually live there) for a total population of 11,000. Area B adds 10%, or 800 people for a total population of 8,800. While their relative numbers stay the same (Area A still holds 55% of the voting power), Area A has increased its total population count from 200 more than Area B to 300 more than Area B. Since legislative districts are not apportioned by percentages, but by actual numbers of people, Area B actually loses political power. Thus, by adjusting the figures without an actual basis for doing so, Judge Gilmore would actually be harming the very people he is trying to help.

[\[FN45\]](#). *Id.* at 1333.

[\[FN46\]](#). *Id.*

[\[FN47\]](#). *Id.* at 1338. [13 U.S.C. § 141\(b\)](#) (1976) provides that the Bureau must report the population of each state to the President within nine months after April 1, census day. This is to ensure that Congress has time to reapportion districts for states that either gain or lose seats in the House of Representatives. In his opinion, Judge Gilmore stated:

It is obvious that Congressional reapportionment does not have to be accomplished before the 1982 primary and general elections. Therefore, there is no absolute need to have accurate census figures for reapportionment until the latter part of 1981, or the early part of 1982, so as to meet early primary elections.

[Young](#), 497 F.Supp. at 1338. It is unlikely that Judge Gilmore has ever read about or participated in the reapportioning of Michigan's State House of Representatives or State Senate seats. For cases detailing the misadventures of the Michigan Legislature in reapportioning state legislative districts, see [In Re Apportionment of State Legislature](#), 413 Mich. 96, 321 N.W.2d 565 (1982), appeal dismissed, 459 U.S. 900 (1982); and [Anderson v. Oakland County Clerk](#), 419 Mich. 313, 353 N.W.2d 448 (1984). Finally, Judge Gilmore fails to take account of those states with odd-year elections, which would not be able to redistrict, as constitutionally mandated, in 1991, and would be forced to wait until 1993 to vote under redistricted state legislative seats.

[FN48]. [Carey I](#), 508 F.Supp. at 407.

[FN49]. [Id.](#) at 414-15.

[FN50]. [Young](#), 497 F.Supp. at 1321; [Carey III](#), 508 F.Supp. at 426-27. The Census Bureau estimated that the “rate of undercounting was 2.7% for the 1960 census (8.0% for Blacks and 2% for whites) and 2.5% for the 1970 census (7.7% for Blacks and 1.9% for whites).” [Carey III](#), 508 F.Supp. at 426. After the 1980 counts were released, the Bureau estimated the total 1980 undercount to be 1.4%. It also estimated that the undercount among Blacks was down to 5.9%. Simple Question, Tough Answer: Whom Should Census Count?, CONG. Q., Aug. 12, 1989, at 2146.

[FN51]. [Carey I](#), 508 F.Supp. at 407.

[FN52]. [Carey III](#), 508 F.Supp. at 429.

[FN53]. [Id.](#)

[FN54]. [Young v. Klutznick](#), 652 F.2d 617, 619 (6th Cir. 1981).

[FN55]. [Id.](#) at 624.

[FN56]. [Id.](#) While the federal Constitution does not require the states to use census data in apportioning state legislative districts, the Michigan Constitution does. [Article 4](#) requires the use of “the official publication of the total population count of each federal decennial census” for apportioning senate seats. [MICH. CONST. art. 4, § 2](#). Interestingly, the Michigan Constitution makes no mention of the census for determining the apportionment of state representatives. See [MICH. CONST. art. 4, § 3](#).

[FN57]. [Carey v. Klutznick](#), 653 F.2d 732, 733 (2nd Cir. 1981).

[FN58]. [Id.](#) at 739-40.

[FN59]. The Census Bureau had already reported its figures, as required by law, to the President. Any further litigation could not have been completed in time for the states to finalize redistricting plans prior to the 1982 elections.

[FN60]. Any challenge against the Census Bureau will meet with historically tough opposition. Indeed, prior to the 1980 challenges, only one suit had ever survived the Bureau's motion to dismiss, but that suit never went to trial. [City of Camden v. Plotkin](#), 466 F.Supp. 44 (D.N.J. 1978). For a comprehensive list of suits against the Census Bureau, see Note, The Courts and the 1980 Census Challenges: Tailoring Rights to Fit Remedies, 15 U. MICH. J.L. REF. 153, 155-56 n.11 (1981).

[FN61]. The Census Bureau announced, in July of 1989, that it had settled New York's motion seeking to enjoin the Bureau from initiating the census until appropriate adjustment techniques were in place. L.A. Daily J., July 21, 1989, at 6, col. 1. Under the terms of the settlement, the Commerce Department agreed to establish “guidelines for decision-making, and to gather and process information that would make it possible for the department to adjust for any undercount in the census.” CONG. Q., Aug. 12, 1989, at 2146 (emphasis added).

While the settlement appears to be a victory for those pushing for an undercount adjustment, a closer look reveals several potential problems. The first problem is that the population data must be sent to the states by April 1, 1991, but the Commerce Department has until July 15, 1991 to decide whether to adjust the figures. *Id.* Furthermore, the agreement does not require the Commerce Department to adjust the figures. It merely requires it to study the feasibility of adjustment, and to make preparations to facilitate an adjustment. *Id.*

Finally, if the Commerce Department does publish adjusted figures after releasing the official counts, there would be two sets of official figures. Determining which set of figures to use could result in even more legal battles. Thus, it seems that instead of answering questions, the settlement merely delays answering the original questions and adds other novel questions to the debate.

[FN62]. *Young*, 497 F.Supp. at 1333; *Carey II*, 508 F.Supp. at 414-15.

[FN63]. See *Young*, 497 F.Supp. at 1333. The court seemed to be saying that because the Bureau had adjusted its figures before, it could do so again. This argument ignores two fundamental problems. First, the fact that the Bureau did something before, has nothing to do with whether its actions were either constitutionally mandated or constitutionally acceptable. Second, the Bureau's “imputations” of persons was based on concrete evidence, gained through follow-up procedures which determined where each added person lived. By contrast, the plaintiffs were seeking to force the Bureau to make adjustments using the “simple synthetic method.” See note 44 *supra*. Such an adjustment would be purely speculative and completely different from the Bureau's 1970 imputations. For further problems with the synthetic method, see note 44 *supra*.

[FN64]. *Young*, 497 F.Supp. at 1332. It would be absurd to argue that the framers, who worked so hard to achieve the census compromise, desired an inaccurate census count. However, the framers also must have realized how difficult an accurate head count would be to achieve, especially in such a sparsely populated area as the new country. See note 10 *supra*.

Hence, it is not inconceivable that the framers merely wanted the enumeration to be as accurate as possible without making statistical adjustments. Certainly, Thomas Jefferson, who was no stranger to statistics—indeed he even estimated fairly accurately the population of his home state of Virginia at one point; see H. ALTERMAN, *supra* note 2, at 168-69—would have proposed a statistical adjustment if he had deemed it necessary or desirable.

[FN65]. *Young*, 497 F.Supp. at 1333.

[FN66]. In *Federation for American Immigration Reform v. Klutznick*, 486 F.Supp. 564 (D.D.C. 1980), the court stated:

The Constitution says that all persons shall be counted. I cannot quarrel with the founding fathers. They said that all should be counted. We count the convicts who are just as dangerous and just as bad as the Communists or the Nazis. . . . The only way we can exclude them would be to pass a constitutional amendment.

Id. at 576 (quoting Representative Celler of New York).

[FN67]. See [Young](#), 497 F.Supp. at 1329, 1333.

[FN68]. Id.

[FN69]. Id.

[FN70]. See generally D. HALACY, CENSUS: 190 YEARS OF COUNTING AMERICA 214-15 (1980). Halacy notes that 87% of the census forms that were mailed out in 1970 were mailed back. Those who fail to mail their forms back receive a visit from a Census Bureau representative. For information on how the Census Bureau plans to count the homeless in 1990, see *Detroit News*, Dec. 4, 1989 at 13, col. 1.

[FN71]. See generally H. ALTERMAN, *supra* note 2, at 168-70; D. HALACY, *supra* note 70, at 32.

[FN72]. However, Thomas Jefferson was fairly well versed in the science of statistics. See H. ALTERMAN, *supra* note 2, at 168-69.

[FN73]. 13 U.S.C. § 195 (1976) (emphasis added).

[FN74]. [Young](#), 497 F.Supp. at 1335.

[FN75]. Id. at 1334 (citing *Young v. Klutznick*, No. 80-71330 (E.D. Mich. May 29, 1980 (motion to dismiss denied)). The portion of Judge Guy's opinion, as reproduced in [Young](#), 497 F.Supp. at 1334, reads in full:

With respect to defendant's argument that 13 U.S.C. § 195 precludes the use of statistical techniques to determine the number of persons in the United States for the purposes of congressional apportionment, the Court is unable to interpret the statutory language so expansively. Rather, the Court finds that § 195 indicates that for less constitutionally significant purposes, the agencies charged with the responsibility of gathering data of this kind may decide to use statistical tools to reach certain conclusions. Plaintiffs readily admit that it would be impermissible to allow congressional apportionment to be based on population figures derived solely by statistical techniques, and the Court is inclined to agree that this would be neither permissible nor prudent. That is not to say, however, that either § 195 or the Constitution itself prohibits the use of statistics in addition to the more traditional measuring tools to arrive at a more accurate population count. Consequently, the Court does not find that plaintiffs' complaint should be dismissed because the course of conduct they request is prohibited by federal statute.

Id.

[FN76]. When Congress amended § 195, it made only minor revisions. It merely replaced the words, "Except for apportionment purposes, the Secretary [of Commerce] may, where he deems it appropriate, [use sampling techniques to determine population counts]," with the phrase "except for purposes of apportionment of Representatives in Congress, among the several states, the Secretary shall, if he considers it feasible [use sampling techniques to determine population counts]." 13 U.S.C. § 195 (1976) (originally enacted as Pub. L. 85-207, § 14, 71 Stat. 484 (1957), amended by Pub. L. 94-521, § 10, 90 Stat. 2464 (1976)).

[FN77]. 13 U.S.C. § 195 (1976).

[FN78]. Cities that challenge the count claim that they will lose billions of dollars in federal aid if the count is not adjusted to reflect the undercount. For example, in its 1970 challenge, New York claimed, "For every person added to the census in a court-ordered adjustment, the cities [New York and Detroit] expect to gain about \$200 a year in federal aid formulas. New York City alone could receive an additional \$1.5 billion during the coming

decade.” Tell, *Novel Census Challenge Works: Major Civil Rights Effect Seen*, NAT'L L. J., Oct. 13, 1980 at 3, col. 1. It is interesting to note that the Tell article continues on page 28 under the title *Bottom Line in Census: Billions in Federal Aid*. *Id.* at 28, col. 1.

[FN79]. Based on 1980 figures. See Maurice and Nathan, *supra* note 33, at 253 n.2, 263.

[FN80]. Maurice and Nathan, *supra* note 33, at 264 (emphasis in original).

[FN81]. Maurice and Nathan, *supra* note 33, at 262. Although only a few grants to the cities use population as an allocation factor, those that do are the largest programs. *Id.* The speed with which the cities react to lower than expected population counts is reflected in the fact that in 1978, grants from the federal government to cities equaled over 25% of the cities' self-raised revenues. *Id.*

[FN82]. Maurice and Nathan, *supra* note 33, at 262-63.

[FN83]. This presents the same standing problem as the court of appeals faced in *Carey*. Since every city that gains means another (or all other) cities must necessarily lose, will the courts in the future require the complaining city to give every other city a chance to intervene? If so, how will such a suit be managed?

[FN84]. Maurice and Nathan, *supra* note 33, at 262 n.11. Only four of the 15 major federal programs (those which account for over 80% of all grants to cities) require the use of Census data in their allocation formulas. See also *Id.* at 264.

[FN85]. *Id.* at 266-69.

[FN86]. *Id.* at 267. Note also that the GRS program contains a “145% rule.” This rule provides that a “local jurisdiction's per capita entitlement cannot exceed 145% of the overall per capita entitlement of all local governments in the state.” Thus, jurisdictions affected by the rule, such as Detroit and New York, benefit each time a person is added to their population counts, since the jurisdiction's entitlement would rise by 145% of the state's total per capita entitlement. *Id.* at 266, n.14.

[FN87]. Using Maurice and Nathan's figures, it is possible to project how much money a city stands to gain from a successful undercount challenge and the resultant change in population numbers. In 1988, Detroit had a projected population of 1,035,920. *GRAND RAPIDS PRESS*, Nov. 5, 1989, at A1, col. 5. Of that population, if we assume that 63.1% are black (that was the percentage in 1980, U.S. DEPARTMENT OF COMMERCE, BUREAU OF THE CENSUS, NATIONAL DATA BOOK AND GUIDE TO SOURCES: STATISTICAL ABSTRACT OF THE UNITED STATES, 33 (1989), and was the estimated percentage in 1987, M. BALL, *DETROIT STATISTICAL ABSTRACT*, 1-15 (1987)), and that the undercount for black persons is still 5.9% (after the 1980 census, the Census Bureau estimated that the undercount was 5.9%. *Simple Question, Tough Answer: Whom Should Census Count?* CONG. Q., Aug. 12, 1989, at 2146), we can multiply the figures by the additional \$12.90 per person:

1,035,920 estimated people

X 63.1 percent black

= 653,666 black people

X 5.9 percent undercount

= 38,566 black people added
X \$12.90 per person added
=\$497,501 total additional revenue

Note that this formula gives Detroit the benefit of the doubt in several ways. First, it assumes that Detroit will not have lost additional population between 1988 and 1990. Since it had lost 50,000 people between 1986 and 1988 (see GRAND RAPIDS PRESS, Nov. 22, 1989, at A1, col. 5e), this assumption is probably overly generous.

Second, it uses the “simple synthetic method” of adjustment, a method that is not statistically defensible. See supra note 44. Third, it assumes that the undercount among Blacks will remain at 5.9% even though it has gone from 8.0% in 1960, to 7.7% in 1970, to 5.9% in 1980. See Simple Question, Tough Answer: Whom Should Census Count?, CONG. Q., Aug. 12, 1989, at 2146. Since both the overall undercount and the Black undercount have gone down steadily since such statistics have been kept, this too is probably a generous assumption.

Finally, it assumes that Detroit will still gain \$12.90 per person added, even after the severe cut-backs in General Revenue Sharing to cities. Maurice and Nathan, supra note 33, at 266 n.14. Hence, the actual amount of money Detroit would gain even from a “simple synthetic” adjustment would probably be even less than the \$497,501 figure—a far cry from the “billions in federal aid” at stake. Tell, Novel Census Challenge Works: Major Civil Rights Effect Seen, NAT'L L.J., Oct. 13, 1980, at 28, Col. 1.

[FN88]. Maurice and Nathan, supra note 33, at 267.

[FN89]. Id. at 253, 263.

[FN90]. See generally Conway, Under the Knife, a Case Study of the Impact of New Federalism on Community Development Appropriations, 10 J. OF LEGIS. 489 (1983). See also Petersen, Federal Fiscal Policy and Aid to State and Local Governments: An Age of Austerity, 34 NAT'L TAX J. 383 (1981).

[FN91]. See Maurice and Nathan, supra note 33, at 262.

[FN92]. It is important to reiterate that the courts have already held that a city has no standing to sue for unequal representation in the state house. *Young v. Klutznick*, 652 F.2d 617 (6th Cir. 1981). Furthermore, in order for a city to have standing to challenge its representation in Congress, the Second Circuit has held that all other states must have a chance to interplead. *Carey v. Klutznick*, 653 F.2d 732 (2nd Cir. 1981).

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