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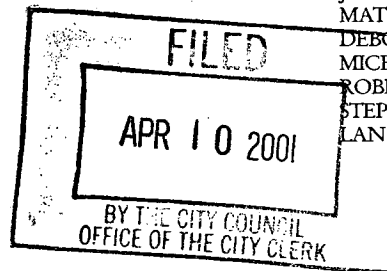
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April 6, 2001



MEMORANDUM

TO: Mayor and Members of the Council

FROM: Samuel L. Jackson, City Attorney
William P. Carnazzo, Chief Assistant City Attorney
Richard E. Archibald, Assistant City Attorney

RE: Update on Adjusted Census Data and Pending Litigation

At the prior Council meeting on the redistricting process, the Council requested an update on the issue of use of adjusted census data and the status of litigation pertaining to adjusted census data and the status of requests under the Freedom of Information Act (FOIA). The purpose of this report is to provide that update and to seek further direction from the Council.

Background

State and local jurisdictions are required to engage in the redistricting process every ten years, following the completion of the decennial census process and the release of census data. The City Charter calls for redistricting within six months after "a regular United States census," and defines that term as follows:

The term a "regular United States census" shall mean a comprehensive population census which is held at regular intervals prescribed by Congress and produces population data equivalent to that described as "Block Data" in the 1970 decennial census." City Charter Sec. 24(a).

Section 21620 of the Elections Code, which also addresses redistricting by charter cities in California, provides that, upon redistricting, "the districts shall be as nearly equal in population as may be according to the latest federal decennial census."

Mayor and Council

Re: Update on Adjusted Census Data and Pending Litigation

April 6, 2001

Page -2-

Historically, the Census Bureau has only gathered and released for redistricting purposes census data that reflects numbers of persons actually counted by the Bureau, even though this process has been considered to result in an "undercount" of the actual number of persons. In 1990, the census data was considered to have resulted in a significant undercount of the population in California and certain other jurisdictions. The potential effects of an undercount during the federal census process include the following: i) the potential loss of an additional Congressional seat during the reapportionment process seat by a state with an undercount;¹ ii) the loss of funding under federal and state programs, which call for distribution of funds on the basis of census population; iii) the potential for minority vote dilution, to the extent that the undercounted population consists of a significant number of individuals belonging to groups protected by the Voting Rights Act; iv) the potential for creation of districts violative of the one person/one vote (equal population) rule at federal, state and local levels, since the undercounted population may be attributable to certain areas or regions.

The Census Bureau has been authorized, since 1957, to use statistical analyses to adjust the raw data gathered during the decennial census process to project more accurate population figures.² However, the 2000 census was the first census for which the Census Bureau formally proposed to use the adjustment process to calculate the population. In October 2000, the former Secretary of Commerce then in office issued a rule delegating to the Director of the Census Bureau the final decision making authority to determine whether statistically adjusted census figures would be used for the 2000 census. The rule also provided that the Director of the Census was to make the final determination of whether to use the statistically adjusted figures after receiving the recommendation and report from a specified committee ("the Executive Steering Committee for Accuracy and Coverage Evaluation," referred to as "ESCAP"). Finally, the rule also provided that, if ESCAP recommended that the statistically adjusted figures be used, but the Director of the Census rejected the recommendation, the adjusted figures were nonetheless to be made available for state and local redistricting purposes.

On February 16, 2001, the newly appointed Secretary of Commerce Donald Evans, issued a new rule, revoking the delegation of authority to the Director of the Census and providing that the decision would be made by the Secretary of Commerce; providing for consideration of advice from individuals other than ESCAP; and eliminating the requirement that statistically adjusted census data be released.

¹Regardless of the potential for undercount, federal law requires that the unadjusted figures be used for purposes of Congressional reapportionment. *Department of Commerce v. U.S. House of Representatives*, 525 U.S. 316 (1999).

²13 U.S.C. Sec. 195 currently provides that, except for apportionment of the House of Representatives, "the Secretary [of Commerce] shall, if he considers it feasible, authorize the use of the statistical method known as "sampling" in carrying out the provisions of this title." A similar version was first enacted in 1957.

Mayor and Council

Re: Update on Adjusted Census Data and Pending Litigation

April 6, 2001

Page -3-

The Census Act provides that census data to be use by states and and local jurisdictions for congressional, state and local redistricting shall be transmitted by April 1, 2001. 13 U.S.C. Sec. 141(c). On March 1, 2001, ESCAP released its report and recommendation on the use of adjusted data. It recommended that the "raw" or unadjusted census data, and not the adjusted figures derived through the statistical sampling process, be released as the Census Bureau's official redistricting data. The report concluded that "the ESCAP is unable to conclude, based on the information available at this time, that the adjusted Census 2000 data are more accurate for redistricting; and that "[a]ccordingly, ESCAP has recommended that unadjusted census data be released as the Census Bureau's official redistricting data." The report indicated that while additional analysis and evaluation may show that the adjusted figures are more accurate, there was insufficient time prior to the April 1, 2000 date to complete the necessary work.³

The director of the Census Bureau concurred with the ESCAP report and recommendation, and recommended to the Secretary of Commerce that the unadjusted data be released as the official redistricting data. The Secretary of Commerce accepted this recommendation and approved the release of the unadjusted data as the official redistricting data.

The unadjusted census data was provided to the City of Sacramento as the official redistricting data for 2000. The unadjusted data shows a population figure of 407,018 for the City of Sacramento.

Litigation

Following the issuance of the new rule by the Secretary of Commerce, and prior to the release of the ESCAP report and recommendation, a lawsuit was filed in the federal district court in Los Angeles on behalf of the City of Los Angeles, several other California cities and counties, and a number of other cities across the country to set aside the new rule.⁴ The basic contention was that the rule was not adopted in a lawful manner, and that the prior rule concerning the use of adjusted census data should therefore govern the 2000 census. Following the ESCAP report and recommendation, and the decision of the Secretary of Commerce to approve the release of the unadjusted data as the official redistricting data, the complaint in the lawsuit was amended to add a new cause of action. In addition to setting aside the new rule, the lawsuit also sought to have the adjusted data declared as the official census data for 2000 for all purposes other

³"Report of the ESCAP, Recommendation Concerning the Methodology to be Used in Producing the Tabulations of Population Reported States and Localities Pursuant to 13 U.S.C. 141(c)", March 1, 2001.

⁴*City of Los Angeles, et al. v. Donald Evans, et al*, CV 01-01671GAAF(MCx) U.S. Dist. Ct., Central Dist. of Calif..

Mayor and Council

Re: Update on Adjusted Census Data and Pending Litigation

April 6, 2001

Page -4-

than apportionment of the House of Representatives. The relief sought, if granted, would result in the use of the adjusted figures on a nationwide basis, including in the City of Sacramento.

On March 30, 2001, the district court heard the plaintiffs' "Renewed Application for Temporary Restraining Order and Order to Show Cause re: Preliminary Injunction." The immediate relief sought was i) to stay the effectiveness of the decision of the Secretary of Commerce not to adjust census data for redistricting; and ii) prohibit the release of unadjusted data as the Census Bureau's official redistricting data unless adjusted data are also released as official redistricting data for all geographic areas. As of the date of this report, the court had not issued a ruling on the application.⁵ The Council will be provided an update at the April 10th meeting.

Freedom of Information Act (FOIA) request

In addition to the lawsuit, a request for information under the federal Freedom of Information Act (FOIA) was filed on behalf of Los Angeles and other cities for the adjusted data and other information related to the census. A first request was filed in January, followed by a second request in March. As of the date of this report, the federal government has not provided any information. The requests seek the adjusted data on a nationwide basis. The Los Angeles City Attorney's Office has advised that the information, if and when produced, will be made available to any and all jurisdictions.

The City Attorney's Office will keep the Council apprised of the status of the litigation and FOIA requests. The Council may wish to consider whether to provide direction to this office to seek joinder or other formal involvement of the City of Sacramento in the litigation and FOIA request.

REA/jlb

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⁵ While the court has not issued a ruling, the Census Bureau has released the unadjusted census data. As noted above, the unadjusted population figure for the City of Sacramento is 407,018.