

Received: from mercury.its.state.ms.us
by governor.state.ms.us; Thu, 01 Mar 2001 08:37:46 -0600
Received: from mx1.its.state.ms.us ([192.42.4.253]) by
mercury.its.state.ms.us (Netscape Messaging Server 4.15) with
SMTP id G9IX7T00.I3G for <governor@govoff.state.ms.us>; Thu, 1
Mar 2001 08:50:17 -0600
Received: from science.aaas.org (science.aaas.org [198.151.217.2])
by mx1.its.state.ms.us (8.10.0/8.10.0) with ESMTTP id f21EnYq23532
for <governor@govoff.state.ms.us>; Thu, 1 Mar 2001 08:49:34 -0600 (CST)
Received: from commsrvr.CCMC.org ([206.151.87.236])
by science.aaas.org (8.9.1/8.9.1) with ESMTTP id JAA11421;
Thu, 1 Mar 2001 09:16:31 -0500
Received: by COMMSRVR with Internet Mail Service (5.5.2650.21)
id <DSZBG9VZ>; Thu, 1 Mar 2001 09:17:16 -0500
Message-ID: <A0F5B05449ABD411BCE900A0C9A941EA08E047@COMMSRVR>
From: Census2000 <Census2000@ccmc.org>
To:
Subject: Census 2000 Initiative News Alert
Date: Thu, 1 Mar 2001 09:17:13 -0500
MIME-Version: 1.0
X-Mailer: Internet Mail Service (5.5.2650.21)
Content-Type: text/plain;
charset="iso-8859-1"

March 1, 2001

NEWS ALERT

Los Angeles, Other Localities Sue Over New Federal Rule
Revoking Census Director's Authority on Adjustment Decision;
Census Bureau Report on A.C.E. Results Imminent

Plus: Sen. Kerry, Senate Democrats Urge Secretary To Delay Decision

The City of Los Angeles filed a lawsuit last week against Commerce Secretary Donald Evans and the department he heads, seeking to overturn a new federal rule giving Mr. Evans the final say over whether to release statistically corrected census data. The cities of San Antonio, TX, Inglewood, CA, and Stamford, CT, the county of Santa Clara, CA, nine members of the Los Angeles City Council, and the Bronx (NY) Borough President joined Los Angeles as plaintiffs in the legal action. The Census Bureau must transmit detailed population numbers to the states for redistricting by April 1; census data are also used to allocate or determine eligibility for about \$200 billion annually in federal program funds.

The cities sought a temporary restraining order (TRO) and preliminary and permanent injunctions to stop the new rule, which was issued on February 16, from taking effect. On February 23, the United States District Court for the Central District of California refused to grant a TRO, saying the City had failed to show "any immediate need for the extraordinary relief requested." However, Judge Gary Allen Feess ordered the Commerce Secretary to demonstrate why the court should not issue a preliminary injunction, and set a hearing on the issues for March 5.

The municipalities and local officials alleged that the new rule violates provisions of the Administrative Procedures Act (APA) requiring public notice of the proposed action and a minimum 30-day period for public comment before a rule is finalized. They argued that the rule is substantive in nature because it would allow the adjustment decision to be driven by "partisan politics, rather than science." A primary purpose of the original rule, finalized last October by the Clinton Administration, was to "insulate from partisan politics the final determination of which census data should be released," the plaintiffs said in their court papers. The cities also noted that the new rule removes a guarantee in the original that statistically corrected census data would be released to the public even if the director declined to adopt a recommendation from the Census Bureau's

senior career staff in favor of adjustment.

In announcing the lawsuit, Los Angeles City Attorney Jim Hahn said the city could lose at least \$325 million over the next decade in state and federal program funds if corrected census data are not used. The municipalities also would be unable to ensure voting districts of roughly equal population, the plaintiffs asserted in their complaint.

In its submission yesterday opposing a preliminary injunction, the Commerce Department claimed the notice and comment provisions of the APA do not cover the new rule because the delegation of decision-making authority from the Secretary to the Census Bureau director deals only with "agency organization, procedure and practice." While the trial court did not consider the merits of Los Angeles' claim in denying a TRO, it said the Commerce Department's assertion regarding the APA was "troubling." The court also said it could void the new rule if it determines that the Department violated the APA. The defendants also asserted that it was premature for the court to consider the plaintiffs' concern about the availability of the adjusted data because the Secretary has not yet determined if he will publicly release adjusted census numbers even if he decides against their transmittal to the states for redistricting,

The new rule was published in the Federal Register on February 23, 2001, and became effective on that date. Interested stakeholders can access the document on the Internet <http://www.access.gpo.gov/su_docs/aces/fr-cont.html>. The docket number for City of Los Angeles v. Donald Evans, Secretary of the Department of Commerce is No. CV01-1671.

Census Bureau Report on A.C.E. Results Imminent: A committee of 12 senior career staff at the Census Bureau has prepared a detailed report evaluating the results of Census 2000 and the Accuracy and Coverage Evaluation (A.C.E.) program, which included a quality-check survey of 314,000 households to measure under- and overcounts in the direct population numbers. Acting Census Bureau Director William Barron Jr., the agency's deputy director and a career civil servant, is expected to transmit the report to Secretary of Commerce Evans today, along with any recommendation he chooses to make regarding the release of adjusted census numbers. The report of the Executive Steering Committee for A.C.E. Policy (ESCAP) might be available on the Census Bureau's web site (www.census.gov <<http://www.census.gov>>) as early as today. The Secretary has said he plans to decide by March 5th, which set of numbers to release.

Senate Democrats Seek Delay in Adjustment Decision Pending Oversight Hearing: Led by Senator John Kerry (D-MA), a member of the committee that oversees the Commerce Department, 48 Senate Democrats signed a letter to Commerce Secretary Evans, urging him to delay release of the detailed Census 2000 figures until the relevant Senate committees could hold hearings to discuss the Secretary's position on adjusting the numbers. The Senators said they were not advocating a long delay that would jeopardize transmittal of block-level census data to the states by the April 1 statutory deadline, but said they were concerned by recent "dramatic policy changes [made] abruptly and without the input of the Congress."

They also asked Mr. Evans to "reconsider" the new federal rule governing the decision on whether to release statistically corrected census data. "We believe the rule leaving that decision in the hands of unbiased professionals [at the Census Bureau] is the most appropriate way to determine the most accurate count," the Senators wrote. In finalizing the original rule last fall, the legislators said, then-Commerce Secretary Norman Mineta "understood this decision was too important to permit even the appearance of partisanship, and he was right to put this important decision in the hands of the experts."

All but two of the Senate's 50 Democrats - Sen. Herbert Kohl and Sen. Russ Feingold of Wisconsin - joined Sen. Kerry in signing the letter to Mr.

Evans. Following the 1990 census, Wisconsin supported the decision of Commerce Secretary Robert Mosbacher not to statistically adjust the numbers after analysis revealed that the state would have lost a congressional district to California if adjusted figures had been used apportion seats in the U.S. House of Representatives.

Questions about the information contained in this News Alert may be directed to Terri Ann Lowenthal at 202/484-2270 or, by e-mail at <<mailto:terriann2k@aol.com>>. For copies of previous News Alerts and other information, use our web site www.census2000.org <<http://www.census2000.org>>. Please direct all requests to receive News Alerts, and all changes in address/phone/fax/e-mail, to the Census 2000 Initiative at <<mailto:Census2000@ccmc.org>> or 202/326-8700. Please feel free to circulate this information to colleagues and other interested individuals.