

# US Supreme Court overturns sampling in Census

By Martin McLaughlin  
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The US Supreme Court gave a limited victory to right-wing opponents of a more accurate Census count of the poor and minorities, with a ruling January 25 which restricts the use of sampling methods in the population count to be conducted in the year 2000.

The 5-4 majority gave a narrowly-based decision on the suit filed by a right-wing legal foundation and the House Republican majority. The Southeastern Legal Foundation filed suit on behalf of 16 individuals in states which might lose seats in Congress if the sampling method rather than actual headcount is employed. Then-Speaker Newt Gingrich filed suit for the House of Representatives, charging that the sampling method violated the constitution's requirement of an "actual enumeration" of the population.

The Census Bureau has used sampling as a supplement to the headcount since the 1940 Census, since it provides government statisticians with a more accurate picture of the population, especially the socially and economically marginalized layers who are most likely to be missed by census takers. These include immigrants, especially those who lack proficiency in English; the lowest-paid workers, who move frequently; migrant workers; and, of course, the homeless, especially young people whose families have disintegrated.

While cloaked in a constitutional pretext, the Republican lawsuit had a crass political motivation: they oppose the use of scientific methods to count people who are unlikely to vote for Republican candidates, and they seek to reduce the flow of federal funds to impoverished urban and rural areas where the undercounted are likely to live.

The court decided that sampling could not be used for the purpose of determining the distribution of seats in

the House of Representatives and electoral votes among the 50 states. But such statistical methods could be used for other purposes, including the drawing of legislative district boundaries within states and the distribution of federal monies in programs where states are entitled to funds based upon their population.

The decision was the outcome of a near-deadlock among the nine justices, who split four to four over the constitutional question of whether the "actual enumeration" should be read to require a headcount, rather than the more accurate headcount plus sampling. The Census Bureau estimated that 4 million people were missed in the 1990 headcount.

Sandra Day O'Connor, the swing vote on the court, took no position on the constitutional issue and based her majority decision narrowly on a 1976 federal law which required a headcount for the purposes of distributing congressional seats and electoral votes. The result is that the Republican lawsuit was victorious in principle, but the Clinton administration will be able to proceed with sampling for most practical purposes.

By limiting its decision to interpreting a federal law, rather than the Constitution, the court effectively invited further congressional action on the issue, as well as more lawsuits. Indeed, the most significant aspect of its Census ruling was that the Southeast Legal Foundation had legal standing to bring the suit in the first place. The Clinton administration had challenged the foundation's right to sue, arguing that no individuals could claim damage from a Census that had not yet been taken.

Secretary of Commerce William Daley said that the ruling did not prohibit sampling for purposes other than distribution of seats, and said both methods would be employed in 2000. Further conflicts between the Republican Congress and the Clinton administration

are inevitable, since the use of two methods of counting will require additional funds. The Census Bureau's budget expires on June 15, a date set last year by the Republicans with an eye to the Supreme Court's calendar.

The motivation of the Clinton administration and the Democratic-controlled city and state governments which upheld the sampling method is to increase their share of the \$180 billion a year which federal programs distribute based on population figures. Neither big business party proposes to do anything about the harrowing social conditions in the inner cities and in impoverished pockets of rural backwardness where the census takers cannot carry out their work.

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