UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK, et al, *Plaintiffs*, v. UNITED STATES DEPARTMENT OF COMMERCE, et al, *Defendants*.	)	No. 1:18-CV-2921 (JMF)

DECLARATION

I, JAMES UTHMEIER, make the following Declaration under the penalty of perjury pursuant to 28 U.S.C. § 1746, and state that the following is true and correct to the best of my knowledge and belief:

1. I am currently Counsel in the Office of the Secretary and Special Advisor to the Secretary for Space. In August 2017 I served as Senior Counsel to the General Counsel.

2. I recently relocated to a new physical work space at the Department of Commerce in June 2018.

3. On August 9, 2018, counsel asked me to ensure that all materials I relied upon when briefing new senior leadership at the Department on September 5, 2017 have been collected and reviewed. I determined that the majority of the records I used were recorded in the original Administrative Record, including examples of Census forms (AR 2, AR 42, AR 48); the Census Bureau's "Why We Ask: Place of Birth, Citizenship, and Year of Entry" webpage (AR 523); a study on American Community Survey data (AR 284); and my previously prepared legal memo (AR 11342), which is included in Defendants' privilege log.

4. Although the majority of materials used during this meeting were produced, I located five additional paper documents in my office, binder-clipped together, which I failed to identify during my previous search for documents in conjunction with the supplement to the Administrative Record, ordered by the Court on July 3, 2018.

5. These materials are all publicly available and were inadvertently omitted from the initial productions and privilege log.

6. The five documents are as follows:

a. Google Scholar printout of *League of United Latin American Citizens, et al. v. Perry, Governor of Texas, et al.*, 548 U.S. 399 (2006), numbering 21 double-sided pages. This document is publicly available.

b. Slip Opinion printout of the syllabus in *League of United Latin American Citizens, et al. v. Perry, Governor of Texas, et al.*, 548 U.S. 399 (2006), numbering 9 single-sided pages. This document is publicly available.

c. A printout of "Title 13-Census" from the United States Code, numbering 18 double-sided pages. This document is publicly available.

d. A printout of "American Community Survey: Key Facts" from the Census Bureau's website, numbering 3 double-sided pages and available at https://www.census.gov/content/dam/Census/programs-surveys/acs/news/10ACS_keyfacts.pdf. This document is publicly available.

e. A printout of two non-consecutive pages (pp. iii and 11) from "Subjects Planned for the 2020 Census and American Community Survey: Federal Legislative and Program Uses (Issued March 2017, Revised)," available at https://www2.census.gov/library/publications/decennial/2020/operations/planned-subjects-2020-acs.pdf. This document is publicly available and produced without markings in the record at AR 194.

7. I used these five documents to convey and facilitate attorney-client privileged communications in the meeting indicated on September 5, 2017 in AR 1996. Each of these documents contains notations and highlights from me which indicate the substance of privileged communications along with my mental impressions in performing legal work for the Department.

8. Due to the nature of these documents, they would not have been produced in any of the supplemental productions but would instead have been described in the privilege log. Their omission was entirely inadvertent and despite my best efforts to collect all material potentially responsive to the Court's July 3, 2018 order.

9. A publicly available copy of each of these documents is included in the Exhibits with this declaration.

10. I have thoroughly searched and re-searched my office for any responsive physical documents. Other than the documents previously produced, indicated on the privilege log, or identified above, I have no other responsive documents.

James Uthmeier

Counsel to the Office of the Secretary and Special Advisor to the Secretary for Space
Office of the Secretary
United States Department of Commerce

Exhibit 1

548 U.S. 399 (2006)

LEAGUE OF UNITED LATIN AMERICAN CITIZENS et al.
v.
PERRY, GOVERNOR OF TEXAS, et al.

No. 05-204.

Supreme Court of United States.

Argued March 1, 2006.
Decided June 28, 2006.[*]

407 *407 *Paul M. Smith* argued the cause for appellants in No. 05-276. With him on the briefs for appellants were *Sam Hirsch* and *J. Gerald Hebert.*

Nina Perales argued the cause for appellants in No. 05-439. With her on the briefs was *David Herrera Urias.*

R. Ted Cruz, Solicitor General of Texas, argued the cause for the state appellees in all cases. With him on the brief were *Greg Abbott,* Attorney General, *Barry R. McBee,* First Assistant Attorney General, *Edward D. Burbach,* Deputy Attorney General, and *Don Cruse, Joel L. Thollander,* and *Adam W. Aston,* Assistant Solicitors General.

Deputy Solicitor General Garre argued the cause for the United States as *amicus curiae* urging affirmance in support of the state appellees. With him on the brief were *Solicitor General Clement, Assistant Attorney General Kim, James A. Feldman, David K. Flynn,* and *Lisa J. Stark.*

Rolando L. Rios, George Korbel, Jose Garza, and *Judith A. Sanders-Castro* filed briefs for the League of United Latin American Citizens et al., appellants in No. 05-204. *Renea Hicks* filed briefs for Travis County, Texas, et al., appellants in No. 05-254.

Michael A. Carvin and *Louis K. Fisher* filed a brief in all cases for appellees Tina Benkiser et al. *Robert M. Long* filed a brief in all cases for appellee Charles Soechting, in support of appellants. *John S. Ament III* and *Richard Gladden* filed briefs for Frenchie Henderson, appellee in support of appellant Travis County, Texas, et al. in No. 05-254. *Gary L. Bledsoe, David T. Goldberg, Sean H. Donahue,* and *Dennis Courtland Hayes* filed briefs for the Texas State-Area Conference of the National
408 Association for the Advancement *408 of Colored People in support of appellants in No. 05-276.[†]

JUSTICE KENNEDY announced the judgment of the Court and delivered the opinion of the Court with respect to Parts II-A and
409 III, an opinion with respect to Parts I and IV, in *409 which THE CHIEF JUSTICE and JUSTICE ALITO join, an opinion with respect to Parts II-B and II-C, and an opinion with respect to Part II-D, in which JUSTICE SOUTER and JUSTICE GINSBURG join.

These four consolidated cases are appeals from a judgment entered by the United States District Court for the Eastern District of Texas. Convened as a three-judge court under 28 U. S. C. § 2284, the court heard appellants' constitutional and statutory challenges to a 2003 enactment of the Texas State Legislature that drew new district lines for the 32 seats Texas holds in the United States House of Representatives. (Though appellants do not join each other as to all claims, for the sake of convenience we refer to appellants collectively.) In 2004 the court entered judgment for appellees and issued detailed findings of fact and conclusions of law. *Session* v. *Perry,* 298 F. Supp. 2d 451 *(per curiam).* This Court vacated that decision and remanded for consideration in light of *Vieth* v. *Jubelirer,* 541 U. S. 267 (2004). 543 U. S. 941 (2004). The District Court reexamined appellants' political gerrymandering claims and, in a second careful opinion, again held for the defendants. *Henderson* v. *Perry,* 399 F. Supp. 2d 756 (2005). These appeals followed, and we noted probable jurisdiction. 546 U. S. 1074 (2005).

Appellants contend the new plan is an unconstitutional partisan gerrymander and that the redistricting statewide violates § 2 of the Voting Rights Act of 1965, 79 Stat. 437, as amended, 42 U. S. C. § 1973. Appellants also contend that the use of race and politics in drawing lines of specific districts violates the First Amendment and the Equal Protection Clause of the Fourteenth Amendment. The three-judge panel, consisting of Circuit Judge Higginbotham and District Judges Ward and Rosenthal, brought considerable experience and expertise to the instant action, based on their knowledge of the State's people, history,

and geography. Judges Higginbotham and Ward, moreover, had served on the three-judge court that drew the plan the Texas
410 Legislature *410 replaced in 2003, so they were intimately familiar with the history and intricacies of the cases.

We affirm the District Court's dispositions on the statewide political gerrymandering claims and the Voting Rights Act claim against District 24. We reverse and remand on the Voting Rights Act claim with respect to District 23. Because we do not reach appellants' race-based equal protection claim or the political gerrymandering claim as to District 23, we vacate the judgment of the District Court on these claims.

I

To set out a proper framework for the cases, we first recount the history of the litigation and recent districting in Texas. An appropriate starting point is not the reapportionment in 2000 but the one from the census in 1990.

The 1990 census resulted in a 30-seat congressional delegation for Texas, an increase of 3 seats over the 27 representatives allotted to the State in the decade before. See *Bush* v. *Vera*, 517 U. S. 952, 956-957 (1996). In 1991 the Texas Legislature drew new district lines. At the time, the Democratic Party controlled both houses in the state legislature, the governorship, and 19 of the State's 27 seats in Congress. Yet change appeared to be on the horizon. In the previous 30 years the Democratic Party's post-Reconstruction dominance over the Republican Party had eroded, and by 1990 the Republicans received 47% of the statewide vote, while the Democrats received 51%. *Henderson, supra,* at 763; Brief for Appellee Perry et al. in No. 05-204 etc., p. 2 (hereinafter Brief for State Appellees).

Faced with a Republican opposition that could be moving toward majority status, the state legislature drew a congressional redistricting plan designed to favor Democratic candidates. Using then-emerging computer technology to draw district lines with artful precision, the legislature enacted a plan later described as the "shrewdest gerrymander of the 1990s." M. Barone, R.
411 Cohen, & C. Cook, Almanac of American *411 Politics 2002, p. 1448 (2001). See *Henderson, supra,* at 767, and n. 47. Although the 1991 plan was enacted by the state legislature, Democratic Congressman Martin Frost was acknowledged as its architect. *Session, supra,* at 482. The 1991 plan "carefully constructs democratic districts `with incredibly convoluted lines' and packs `heavily Republican' suburban areas into just a few districts." *Henderson, supra,* at 767, n. 47 (quoting M. Barone & R. Cohen, Almanac of American Politics 2004, p. 1510 (2003) (hereinafter 2004 Almanac)).

Voters who considered this unfair and unlawful treatment sought to invalidate the 1991 plan as an unconstitutional partisan gerrymander, but to no avail. See *Terrazas* v. *Slagle*, 789 F. Supp. 828, 833 (WD Tex. 1992); *Terrazas* v. *Slagle*, 821 F. Supp. 1162, 1175 (WD Tex. 1993) *(per curiam)*. The 1991 plan realized the hopes of Democrats and the fears of Republicans with respect to the composition of the Texas congressional delegation. The 1990's were years of continued growth for the Texas Republican Party, and by the end of the decade it was sweeping elections for statewide office. Nevertheless, despite carrying 59% of the vote in statewide elections in 2000, the Republicans only won 13 congressional seats to the Democrats' 17. *Henderson, supra,* at 763.

These events likely were not forgotten by either party when it came time to draw congressional districts in conformance with the 2000 census and to incorporate two additional seats for the Texas delegation. The Republican Party controlled the governorship and the State Senate; it did not yet control the State House of Representatives, however. As so constituted, the legislature was unable to pass a redistricting scheme, resulting in litigation and the necessity of a court-ordered plan to comply with the Constitution's one-person, one-vote requirement. See *Balderas* v. *Texas*, Civ. Action No. 6:01CV158 (ED Tex., Nov. 14, 2001) *(per curiam),* summarily aff'd, 536 U. S. 919 (2002), App. E to Juris. Statement in No. 05-276, p. 202a (hereinafter
412 *Balderas,* App. E to *412 Juris. Statement), The congressional districting map resulting from the *Balderas* litigation is known as Plan 1151C.

As we have said, two members of the three-judge court that drew Plan 1151C later served on the three-judge court that issued the judgment now under review. Thus we have the benefit of their candid comments concerning the redistricting approach taken in the *Balderas* litigation. Conscious that the primary responsibility for drawing congressional districts is given to political branches of government, and hesitant to "und[o] the work of one political party for the benefit of another," the three-judge *Balderas* court sought to apply "only `neutral' redistricting standards" when drawing Plan 1151C. *Henderson,* 399 F. Supp. 2d, at 768. Once the District Court applied these principles—such as placing the two new seats in high-growth areas, following county and voting precinct lines, and avoiding the pairing of incumbents—"the drawing ceased, leaving the map free of further change except to conform it to one-person, one-vote." *Ibid.* Under Plan 1151C, the 2002 congressional elections resulted in a 17-to-15 Democratic majority in the Texas delegation, compared to a 59% to 40% Republican majority in votes for statewide

office in 2000. *Id.,* at 763-764. Reflecting on the *Balderas* Plan, the District Court in *Henderson* was candid to acknowledge "[t]he practical effect of this effort was to leave the 1991 Democratic Party gerrymander largely in place as a `legal' plan." 399 F. Supp. 2d, at 768.

The continuing influence of a court-drawn map that "perpetuated much of [the 1991] gerrymander," *ibid.,* was not lost on Texas Republicans when, in 2003, they gained control of the State House of Representatives and, thus, both houses of the legislature. The Republicans in the legislature "set out to increase their representation in the congressional delegation." *Session,* 298 F. Supp. 2d, at 471. See also *id.,* at 470 ("There is little question but that the single-minded purpose of the Texas
413 Legislature in enacting [a new plan] was to gain partisan advantage"). After a protracted partisan *413 struggle, during which Democratic legislators left the State for a time to frustrate quorum requirements, the legislature enacted a new congressional districting map in October 2003. It is called Plan 1374C. The 2004 congressional elections did not disappoint the plan's drafters. Republicans won 21 seats to the Democrats' 11, while also obtaining 58% of the vote in statewide races against the Democrats' 41%. *Henderson, supra,* at 764.

Soon after Texas enacted Plan 1374C, appellants challenged it in court, alleging a host of constitutional and statutory violations. Initially, the District Court entered judgment against appellants on all their claims. See *Session,* 298 F. Supp. 2d, at 457; *id.,* at 515 (Ward, J., concurring in part and dissenting in part). Appellants sought relief here and, after their jurisdictional statements were filed, this Court issued *Vieth* v. *Jubelirer.* Our order vacating the District Court judgment and remanding for consideration in light of *Vieth* was issued just weeks before the 2004 elections. See 543 U. S. 941 (Oct. 18, 2004). On remand, the District Court, believing the scope of its mandate was limited to questions of political gerrymandering, again rejected appellants' claims. *Henderson,* 399 F. Supp. 2d, at 777-778. Judge Ward would have granted relief under the theory—presented to the court for the first time on remand—that mid-decennial redistricting violates the one-person, one-vote requirement, but he concluded such an argument was not within the scope of the remand mandate. *Id.,* at 779, 784-785 (specially concurring).

II

A

Based on two similar theories that address the mid-decade character of the 2003 redistricting, appellants now argue that Plan 1374C should be invalidated as an unconstitutional partisan gerrymander. In *Davis* v. *Bandemer,* 478 U. S. 109 (1986), the
414 Court held that an equal protection challenge to a political gerrymander presents a justiciable case or controversy, *414 *id.,* at 118-127, but there was disagreement over what substantive standard to apply. Compare *id.,* at 127-137 (plurality opinion), with *id.,* at 161-162 (Powell, J., concurring in part and dissenting in part). That disagreement persists. A plurality of the Court in *Vieth* would have held such challenges to be nonjusticiable political questions, but a majority declined to do so. See 541 U. S., at 306 (KENNEDY, J., concurring in judgment); *id.,* at 317 (STEVENS, J., dissenting); *id.,* at 343 (SOUTER, J., dissenting); *id.,* at 355 (BREYER, J., dissenting). We do not revisit the justiciability holding but do proceed to examine whether appellants' claims offer the Court a manageable, reliable measure of fairness for determining whether a partisan gerrymander violates the Constitution.

B

Before addressing appellants' arguments on mid-decade redistricting, it is appropriate to note some basic principles on the roles the States, Congress, and the courts play in determining how congressional districts are to be drawn. Article I of the Constitution provides:

> "Section 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States . . . .
>
> . . . . .
>
> "Section 4. The Times, Places and Manner of holding Elections for . . . Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations. . . ."

This text, we have explained, "leaves with the States primary responsibility for apportionment of their federal congressional. . . districts." *Growe* v. *Emison*, 507 U. S. 25, 34 (1993); see also *Chapman* v. *Meier*, 420 U. S. 1, 27 (1975) ("[R]eapportionment is
415 primarily the duty and responsibility of the State through its legislature or other body"); *Smiley* *415 v. *Holm*, 285 U. S. 355, 366-367 (1932) (reapportionment implicated State's powers under Art. I, § 4). Congress, as the text of the Constitution also provides, may set further requirements, and with respect to districting it has generally required single-member districts. See U. S. Const., Art. I, § 4; Pub. L. 90-196, 81 Stat. 581, 2 U. S. C. § 2c; *Branch* v. *Smith*, 538 U. S. 254, 266-267 (2003). But see *id.*, at 275 (plurality opinion) (multimember districts permitted by 55 Stat. 762, 2 U. S. C. § 2a(c) in limited circumstances). With respect to a mid-decade redistricting to change districts drawn earlier in conformance with a decennial census, the Constitution and Congress state no explicit prohibition.

Although the legislative branch plays the primary role in congressional redistricting, our precedents recognize an important role for the courts when a districting plan violates the Constitution. See, *e. g.*, *Wesberry* v. *Sanders*, 376 U. S. 1 (1964). This litigation is an example, as we have discussed. When Texas did not enact a plan to comply with the one-person, one-vote requirement under the 2000 census, the District Court found it necessary to draw a redistricting map on its own. That the federal courts sometimes are required to order legislative redistricting, however, does not shift the primary locus of responsibility.

> "Legislative bodies should not leave their reapportionment tasks to the federal courts; but when those with legislative responsibilities do not respond, or the imminence of a state election makes it impractical for them to do so, it becomes the `unwelcome obligation' of the federal court to devise and impose a reapportionment plan pending later legislative action." *Wise* v. *Lipscomb*, 437 U. S. 535, 540 (1978) (principal opinion) (quoting *Connor* v. *Finch*, 431 U. S. 407, 415 (1977)).

Quite apart from the risk of acting without a legislature's expertise, and quite apart from the difficulties a court faces in drawing
416 a map that is fair and rational, see *id.*, at 414-415, *416 the obligation placed upon the Federal Judiciary is unwelcome because drawing lines for congressional districts is one of the most significant acts a State can perform to ensure citizen participation in republican self-governance. That Congress is the federal body explicitly given constitutional power over elections is also a noteworthy statement of preference for the democratic process. As the Constitution vests redistricting responsibilities foremost in the legislatures of the States and in Congress, a lawful, legislatively enacted plan should be preferable to one drawn by the courts.

It should follow, too, that if a legislature acts to replace a court-drawn plan with one of its own design, no presumption of impropriety should attach to the legislative decision to act. As the District Court noted here, *Session*, 298 F. Supp. 2d, at 460-461, our decisions have assumed that state legislatures are free to replace court-mandated remedial plans by enacting redistricting plans of their own. See, *e. g.*, *Upham* v. *Seamon*, 456 U. S. 37, 44 (1982) *(per curiam)*; *Wise*, *supra*, at 540 (principal opinion) (quoting *Connor*, *supra*, at 415); *Burns* v. *Richardson*, 384 U. S. 73, 85 (1966); *Reynolds* v. *Sims*, 377 U. S. 533, 587 (1964). Underlying this principle is the assumption that to prefer a court-drawn plan to a legislature's replacement would be contrary to the ordinary and proper operation of the political process. Judicial respect for legislative plans, however, cannot justify legislative reliance on improper criteria for districting determinations. With these considerations in mind, I now turn to consider appellants' challenges to the new redistricting plan.

C

Appellants claim that Plan 1374C, enacted by the Texas Legislature in 2003, is an unconstitutional political gerrymander. A decision, they claim, to effect mid-decennial redistricting, when solely motivated by partisan objectives, violates equal protection
417 and the First Amendment because it *417 serves no legitimate public purpose and burdens one group because of its political opinions and affiliation. The mid-decennial nature of the redistricting, appellants say, reveals the legislature's sole motivation. Unlike *Vieth*, where the legislature acted in the context of a required decennial redistricting, the Texas Legislature voluntarily replaced a plan that itself was designed to comply with new census data. Because Texas had "no constitutional obligation to act at all" in 2003, Brief for Appellant Jackson et al. in No. 05-276, p. 26, it is hardly surprising, according to appellants, that the District Court found "[t]here is little question but that the single-minded purpose of the Texas Legislature in enacting Plan 1374C was to gain partisan advantage" for the Republican majority over the Democratic minority, *Session*, *supra*, at 470.

A rule, or perhaps a presumption, of invalidity when a mid-decade redistricting plan is adopted solely for partisan motivations is a salutary one, in appellants' view, for then courts need not inquire about, nor parties prove, the discriminatory effects of partisan gerrymandering—a matter that has proved elusive since *Bandemer*. See *Vieth*, 541 U. S., at 281 (plurality opinion);

Bandemer, 478 U. S., at 127 (plurality opinion). Adding to the test's simplicity is that it does not quibble with the drawing of individual district lines but challenges the decision to redistrict at all.

For a number of reasons, appellants' case for adopting their test is not convincing. To begin with, the state appellees dispute the assertion that partisan gain was the "sole" motivation for the decision to replace Plan 1151C. There is some merit to that criticism, for the pejorative label overlooks indications that partisan motives did not dictate the plan in its entirety. The legislature does seem to have decided to redistrict with the sole purpose of achieving a Republican congressional majority, but partisan aims did not guide every line it drew. As the District Court found, the contours of some contested district lines were
418 drawn based *418 on more mundane and local interests. *Session, supra*, at 472-473. The state appellees also contend, and appellants do not contest, that a number of line-drawing requests by Democratic state legislators were honored. Brief for State Appellees 34.

Evaluating the legality of acts arising out of mixed motives can be complex, and affixing a single label to those acts can be hazardous, even when the actor is an individual performing a discrete act. See, *e. g.*, *Hartman* v. *Moore*, 547 U. S. 250, 259-260 (2006). When the actor is a legislature and the act is a composite of manifold choices, the task can be even more daunting. Appellants' attempt to separate the legislature's sole motive for discarding Plan 1151C from the complex of choices it made while drawing the lines of Plan 1374C seeks to avoid that difficulty. We should be skeptical, however, of a claim that seeks to invalidate a statute based on a legislature's unlawful motive but does so without reference to the content of the legislation enacted.

Even setting this skepticism aside, a successful claim attempting to identify unconstitutional acts of partisan gerrymandering must do what appellants' sole-motivation theory explicitly disavows: show a burden, as measured by a reliable standard, on the complainants' representational rights. For this reason, a majority of the Court rejected a test proposed in *Vieth* that is markedly similar to the one appellants present today. Compare 541 U. S., at 336 (STEVENS, J., dissenting) ("Just as race can be a factor in, but cannot dictate the outcome of, the districting process, so too can partisanship be a permissible consideration in drawing district lines, so long as it does not predominate"), and *id.*, at 338 ("[A]n acceptable rational basis can be neither purely personal nor purely partisan"), with *id.*, at 292-295 (plurality opinion), and *id.*, at 307-308 (KENNEDY, J., concurring in judgment).

The sole-intent standard offered here is no more compelling when it is linked to the circumstance that Plan 1374C is mid-
419 decennial legislation. The text and structure of the *419 Constitution and our case law indicate there is nothing inherently suspect about a legislature's decision to replace middecade a court-ordered plan with one of its own. And even if there were, the fact of mid-decade redistricting alone is no sure indication of unlawful political gerrymanders. Under appellants' theory, a highly effective partisan gerrymander that coincided with decennial redistricting would receive less scrutiny than a bumbling, yet solely partisan, mid-decade redistricting. More concretely, the test would leave untouched the 1991 Texas redistricting, which entrenched a party on the verge of minority status, while striking down the 2003 redistricting plan, which resulted in the majority Republican Party capturing a larger share of the seats. A test that treats these two similarly effective power plays in such different ways does not have the reliability appellants ascribe to it.

Furthermore, compared to the map challenged in *Vieth,* which led to a Republican majority in the congressional delegation despite a Democratic majority in the statewide vote, Plan 1374C can be seen as making the party balance more congruent to statewide party power. To be sure, there is no constitutional requirement of proportional representation, and equating a party's statewide share of the vote with its portion of the congressional delegation is a rough measure at best. Nevertheless, a congressional plan that more closely reflects the distribution of state party power seems a less likely vehicle for partisan discrimination than one that entrenches an electoral minority. See *Gaffney* v. *Cummings*, 412 U. S. 735, 754 (1973). By this measure, Plan 1374C can be seen as fairer than the plan that survived in *Vieth* and the two previous Texas plans—all three of which would pass the modified sole-intent test that Plan 1374C would fail.

A brief for one of the *amici* proposes a symmetry standard that would measure partisan bias by "compar[ing] how both parties
420 would fare hypothetically if they each (in turn) had received a given percentage of the vote." Brief for Gary *420 King et al. 5. Under that standard the measure of a map's bias is the extent to which a majority party would fare better than the minority party, should their respective shares of the vote reverse. *Amici*'s proposed standard does not compensate for appellants' failure to provide a reliable measure of fairness. The existence or degree of asymmetry may in large part depend on conjecture about where possible vote-switchers will reside. Even assuming a court could choose reliably among different models of shifting voter preferences, we are wary of adopting a constitutional standard that invalidates a map based on unfair results that would occur in a hypothetical state of affairs. Presumably such a challenge could be litigated if and when the feared inequity arose. Cf. *Abbott Laboratories* v. *Gardner*, 387 U. S. 136, 148 (1967). More fundamentally, the counterfactual plaintiff would face the

same problem as the present, actual appellants: providing a standard for deciding how much partisan dominance is too much. Without altogether discounting its utility in redistricting planning and litigation, I would conclude asymmetry alone is not a reliable measure of unconstitutional partisanship.

In the absence of any other workable test for judging partisan gerrymanders, one effect of appellants' focus on middecade redistricting could be to encourage partisan excess at the outset of the decade, when a legislature redistricts pursuant to its decennial constitutional duty and is then immune from the charge of sole motivation. If mid-decade redistricting were barred or at least subject to close judicial oversight, opposition legislators would also have every incentive to prevent passage of a legislative plan and try their luck with a court that might give them a better deal than negotiation with their political rivals. See *Henderson*, 399 F. Supp. 2d, at 776-777.

D

421 Appellants' second political gerrymandering theory is that mid-decade redistricting for exclusively partisan purposes *421 violates the one-person, one-vote requirement. They observe that population variances in legislative districts are tolerated only if they "are unavoidable despite a good-faith effort to achieve absolute equality, or for which justification is shown." *Karcher* v. *Daggett*, 462 U. S. 725, 730 (1983) (quoting *Kirkpatrick* v. *Preisler*, 394 U. S. 526, 531 (1969); internal quotation marks omitted). Working from this unchallenged premise, appellants contend that, because the population of Texas has shifted since the 2000 census, the 2003 redistricting, which relied on that census, created unlawful interdistrict population variances.

To distinguish the variances in Plan 1374C from those of ordinary, 3-year-old districting plans or belatedly drawn court-ordered plans, appellants again rely on the voluntary, mid-decade nature of the redistricting and its partisan motivation. Appellants do not contend that a decennial redistricting plan would violate equal representation three or five years into the decade if the State's population had shifted substantially. As they must, they concede that States operate under the legal fiction that their plans are constitutionally apportioned throughout the decade, a presumption that is necessary to avoid constant redistricting, with accompanying costs and instability. See *Georgia* v. *Ashcroft*, 539 U. S. 461, 488, n. 2 (2003); *Reynolds*, 377 U. S., at 583. Appellants agree that a plan implemented by a court in 2001 using 2000 population data also enjoys the benefit of the so-called legal fiction, presumably because belated court-drawn plans promote other important interests, such as ensuring a plan complies with the Constitution and voting rights legislation.

In appellants' view, however, this fiction should not provide a safe harbor for a legislature that enacts a voluntary, mid-decade plan overriding a legal court-drawn plan, thus "`unnecessarily'" creating population variance "when there was no legal compulsion" to do so. Brief for Appellant Travis County et al. in No. 05-254, p. 18. This is particularly so, appellants say, when a
422 legislature acts because of an *422 exclusively partisan motivation. Under appellants' theory this improper motive at the outset seems enough to condemn the map for violating the equal-population principle. For this reason, appellants believe that the State cannot justify under *Karcher* v. *Daggett* the population variances in Plan 1374C because they are the product of partisan bias and the desire to eliminate all competitive districts.

As the District Court noted, this is a test that turns not on whether a redistricting furthers equal-population principles but rather on the justification for redrawing a plan in the first place. *Henderson, supra*, at 776. In that respect appellants' approach merely restates the question whether it was permissible for the Texas Legislature to redraw the districting map. Appellants' answer, which mirrors their attack on mid-decennial redistricting solely motivated by partisan considerations, is unsatisfactory for reasons we have already discussed.

Appellants also contend that the legislature intentionally sought to manipulate population variances when it enacted Plan 1374C. There is, however, no District Court finding to that effect, and appellants present no specific evidence to support this serious allegation of bad faith. Because appellants have not demonstrated that the legislature's decision to enact Plan 1374C constitutes a violation of the equal-population requirement, we find unavailing their subsidiary reliance on *Larios* v. *Cox*, 300 F. Supp. 2d 1320 (ND Ga.) *(per curiam)*, summarily aff'd, 542 U. S. 947 (2004). In *Larios*, the District Court reviewed the Georgia Legislature's decennial redistricting of its State Senate and House of Representatives districts and found deviations from the equal-population requirement. The District Court then held the objectives of the drafters, which included partisan interests along with regionalist bias and inconsistent incumbent protection, did not justify those deviations. 300 F. Supp. 2d, at 1351-1352. The
423 *Larios* holding and its examination of the legislature's motivations were relevant only in response to *423 an equal-population violation, something appellants have not established here. Even in addressing political motivation as a justification for an equal-population violation, moreover, *Larios* does not give clear guidance. The panel explained it "need not resolve the issue of

whether or when partisan advantage alone may justify deviations in population" because the plans were "plainly unlawful" and any partisan motivations were "bound up inextricably" with other clearly rejected objectives. *Id.,* at 1352.

In sum, we disagree with appellants' view that a legislature's decision to override a valid, court-drawn plan mid-decade is sufficiently suspect to give shape to a reliable standard for identifying unconstitutional political gerrymanders. We conclude that appellants have established no legally impermissible use of political classifications. For this reason, they state no claim on which relief may be granted for their statewide challenge.

III

Plan 1374C made changes to district lines in south and west Texas that appellants challenge as violations of § 2 of the Voting Rights Act and the Equal Protection Clause of the Fourteenth Amendment. The most significant changes occurred to District 23, which—both before and after the redistricting—covers a large land area in west Texas, and to District 25, which earlier included Houston but now includes a different area, a north-south strip from Austin to the Rio Grande Valley.

After the 2002 election, it became apparent that District 23 as then drawn had an increasingly powerful Latino population that threatened to oust the incumbent Republican, Henry Bonilla. Before the 2003 redistricting, the Latino share of the citizen voting-age population was 57.5%, and Bonilla's support among Latinos had dropped with each successive election since 1996.
424 *Session,* 298 F. Supp. 2d, at 488-489. In 2002, Bonilla captured only 8% of the Latino vote, *424 *ibid.,* and 51.5% of the overall vote. Faced with this loss of voter support, the legislature acted to protect Bonilla's incumbency by changing the lines—and hence the population mix—of the district. To begin with, the new plan divided Webb County and the city of Laredo, on the Mexican border, that formed the county's population base. Webb County, which is 94% Latino, had previously rested entirely within District 23; under the new plan, nearly 100,000 people were shifted into neighboring District 28. *Id.,* at 489. The rest of the county, approximately 93,000 people, remained in District 23. To replace the numbers District 23 lost, the State added voters in counties comprising a largely Anglo, Republican area in central Texas. *Id.,* at 488. In the newly drawn district, the Latino share of the citizen voting-age population dropped to 46%, though the Latino share of the total votingage population remained just over 50%. *Id.,* at 489.

These changes required adjustments elsewhere, of course, so the State inserted a third district between the two districts to the east of District 23, and extended all three of them farther north. New District 25 is a long, narrow strip that winds its way from McAllen and the Mexican-border towns in the south to Austin, in the center of the State and 300 miles away. *Id.,* at 502. In between it includes seven full counties, but 77% of its population resides in split counties at the northern and southern ends. Of this 77%, roughly half reside in Hidalgo County, which includes McAllen, and half are in Travis County, which includes parts of Austin. *Ibid.* The Latinos in District 25, comprising 55% of the district's citizen voting-age population, are also mostly divided between the two distant areas, north and south. *Id.,* at 499. The Latino communities at the opposite ends of District 25 have divergent "needs and interests," *id.,* at 502, owing to "differences in socio-economic status, education, employment, health, and other characteristics," *id.,* at 512.

425 The District Court summed up the purposes underlying the redistricting in south and west Texas: "The change to *425 Congressional District 23 served the dual goal of increasing Republican seats in general and protecting Bonilla's incumbency in particular, with the additional political nuance that Bonilla would be reelected in a district that had a majority of Latino voting age population—although clearly not a majority of citizen voting age population and certainly not an effective voting majority." *Id.,* at 497. The goal in creating District 25 was just as clear: "[t]o avoid retrogression under § 5" of the Voting Rights Act given the reduced Latino voting strength in District 23. *Id.,* at 489.

A

The question we address is whether Plan 1374C violates § 2 of the Voting Rights Act. A State violates § 2

> "if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of [a racial group] in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 42 U. S. C. § 1973(b).

The Court has identified three threshold conditions for establishing a § 2 violation: (1) the racial group is "`"sufficiently large and geographically compact to constitute a majority in a single-member district"'"; (2) the racial group is "`"politically cohesive"'"; and

(3) the majority "'vot[es] sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate.'"" *Johnson v. De Grandy*, 512 U. S. 997, 1006-1007 (1994) (quoting *Growe*, 507 U. S., at 40 (in turn quoting *Thornburg v. Gingles*, 478 U. S. 30, 50-51 (1986))). These are the so-called *Gingles* requirements.

If all three *Gingles* requirements are established, the statutory text directs us to consider the "totality of circumstances" to
426 determine whether members of a racial group *426 have less opportunity than do other members of the electorate. *De Grandy, supra*, at 1011-1012; see also *Abrams v. Johnson*, 521 U. S. 74, 91 (1997). The general terms of the statutory standard "totality of circumstances" require judicial interpretation. For this purpose, the Court has referred to the Senate Report on the 1982 amendments to the Voting Rights Act, which identifies factors typically relevant to a § 2 claim, including:

> "the history of voting-related discrimination in the State or political subdivision; the extent to which voting in the elections of the State or political subdivision is racially polarized; the extent to which the State or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group . . .; the extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process; the use of overt or subtle racial appeals in political campaigns; and the extent to which members of the minority group have been elected to public office in the jurisdiction. The Report notes also that evidence demonstrating that elected officials are unresponsive to the particularized needs of the members of the minority group and that the policy underlying the State's or the political subdivision's use of the contested practice or structure is tenuous may have probative value." *Gingles, supra*, at 44-45 (citing S. Rep. No. 97-417 (1982) (hereinafter Senate Report); pinpoint citations omitted).

Another relevant consideration is whether the number of districts in which the minority group forms an effective majority is roughly proportional to its share of the population in the relevant area. *De Grandy, supra*, at 1000.

427 *427 The District Court's determination whether the § 2 requirements are satisfied must be upheld unless clearly erroneous. See *Gingles, supra*, at 78-79. Where "the ultimate finding of dilution" is based on "a misreading of the governing law," however, there is reversible error. *De Grandy, supra*, at 1022.

B

Appellants argue that the changes to District 23 diluted the voting rights of Latinos who remain in the district. Specifically, the redrawing of lines in District 23 caused the Latino share of the citizen voting-age population to drop from 57.5% to 46%. The District Court recognized that "Latino voting strength in Congressional District 23 is, unquestionably, weakened under Plan 1374C." *Session*, 298 F. Supp. 2d, at 497. The question is whether this weakening amounts to vote dilution.

To begin the *Gingles* analysis, it is evident that the second and third *Gingles* preconditions—cohesion among the minority group and bloc voting among the majority population—are present in District 23. The District Court found "racially polarized voting" in south and west Texas, and indeed "throughout the State." *Session, supra*, at 492-493. The polarization in District 23 was especially severe: 92% of Latinos voted against Bonilla in 2002, while 88% of non-Latinos voted for him. App. 134, Table 20 (expert Report of Allan J. Lichtman on Voting-Rights Issues in Texas Congressional Redistricting (Nov. 14, 2003) (hereinafter Lichtman Report)). Furthermore, the projected results in new District 23 show that the Anglo citizen voting-age majority will often, if not always, prevent Latinos from electing the candidate of their choice in the district. *Session, supra*, at 496-497. For all these reasons, appellants demonstrated sufficient minority cohesion and majority bloc voting to meet the second and third *Gingles* requirements.

428 The first *Gingles* factor requires that a group be "sufficiently large and geographically compact to constitute a majority *428 in a single-member district." 478 U. S., at 50. Latinos in District 23 could have constituted a majority of the citizen voting-age population in the district, and in fact did so under Plan 1151C. Though it may be possible for a citizen votingage majority to lack real electoral opportunity, the Latino majority in old District 23 did possess electoral opportunity protected by § 2.

While the District Court stated that District 23 had not been an effective opportunity district under Plan 1151C, it recognized the district was "moving in that direction." *Session*, 298 F. Supp. 2d, at 489. Indeed, by 2002 the Latino candidate of choice in District 23 won the majority of the district's votes in 13 out of 15 elections for statewide officeholders. *Id.*, at 518 (Ward, J., concurring in part and dissenting in part). And in the congressional race, Bonilla could not have prevailed without some Latino support, limited though it was. State legislators changed District 23 specifically because they worried that Latinos would vote Bonilla out of office. *Id.*, at 488.

Furthermore, to the extent the District Court suggested that District 23 was not a Latino opportunity district in 2002 simply because Bonilla prevailed, see *id.,* at 488, 495, it was incorrect. The circumstance that a group does not win elections does not resolve the issue of vote dilution. We have said that "the ultimate right of § 2 is equality of opportunity, not a guarantee of electoral success for minority-preferred candidates of whatever race." *De Grandy*, 512 U. S., at 1014, n. 11. In old District 23 the increase in Latino voter registration and overall population, *Session*, 298 F. Supp. 2d, at 523 (Ward, J., concurring in part and dissenting in part), the concomitant rise in Latino voting power in each successive election, the near-victory of the Latino candidate of choice in 2002, and the resulting threat to the Bonilla incumbency, were the very reasons that led the State to
429 redraw the district lines. Since the redistricting prevented the immediate success of the emergent Latino majority in District *429
23, there was a denial of opportunity in the real sense of that term.

Plan 1374C's version of District 23, by contrast, "is unquestionably not a Latino opportunity district." *Id.,* at 496. Latinos, to be sure, are a bare majority of the voting-age population in new District 23, but only in a hollow sense, for the parties agree that the relevant numbers must include citizenship. This approach fits the language of § 2 because only eligible voters affect a group's opportunity to elect candidates. In sum, appellants have established that Latinos could have had an opportunity district in District 23 had its lines not been altered and that they do not have one now.

Considering the district in isolation, the three *Gingles* requirements are satisfied. The State argues, nonetheless, that it met its § 2 obligations by creating new District 25 as an offsetting opportunity district. It is true, of course, that "States retain broad discretion in drawing districts to comply with the mandate of § 2." *Shaw* v. *Hunt*, 517 U. S. 899, 917, n. 9 (1996) *(Shaw II)*. This principle has limits, though. The Court has rejected the premise that a State can always make up for the less-than-equal opportunity of some individuals by providing greater opportunity to others. See *id.,* at 917 ("The vote-dilution injuries suffered by these persons are not remedied by creating a safe majority-black district somewhere else in the State"). As set out below, these conflicting concerns are resolved by allowing the State to use one majority-minority district to compensate for the absence of another only when the racial group in each area had a § 2 right and both could not be accommodated.

As to the first *Gingles* requirement, it is not enough that appellants show the possibility of creating a majority-minority district that would include the Latinos in District 23. See *Shaw II, supra*, at 917, n. 9 (rejecting the idea that "a § 2 plaintiff has the right to be placed in a majority-minority district once a violation of the statute is shown"). If the inclusion of the plaintiffs would
430 necessitate the exclusion *430 of others, then the State cannot be faulted for its choice. That is why, in the context of a challenge to the drawing of district lines, "the first *Gingles* condition requires the possibility of creating more than the existing number of reasonably compact districts with a sufficiently large minority population to elect candidates of its choice." *De Grandy, supra*, at 1008.

The District Court found that the current plan contains six Latino opportunity districts and that seven reasonably compact districts could not be drawn. Appellant GI Forum presented a plan with seven majority-Latino districts, but the District Court found these districts were not reasonably compact, in part because they took in "disparate and distant communities." *Session, supra*, at 491-492, and n. 125. While there was some evidence to the contrary, the court's resolution of the conflicting evidence was not clearly erroneous.

A problem remains, though, for the District Court failed to perform a comparable compactness inquiry for Plan 1374C as drawn. *De Grandy* requires a comparison between a challenger's proposal and the "existing number of reasonably compact districts." 512 U. S., at 1008. To be sure, § 2 does not forbid the creation of a noncompact majority-minority district. *Bush* v. *Vera*, 517 U. S., at 999 (KENNEDY, J., concurring). The noncompact district cannot, however, remedy a violation elsewhere in the State. See *Shaw II, supra*, at 916 (unless "the district contains a `geographically compact' population" of the racial group, "where that district sits, `there neither has been a wrong nor can be a remedy'" (quoting *Growe*, 507 U. S., at 41)). Simply put, the State's creation of an opportunity district for those without a § 2 right offers no excuse for its failure to provide an opportunity district for those with a § 2 right. And since there is no § 2 right to a district that is not reasonably compact, see *Abrams*, 521 U. S., at 91-
431 92, the creation of a noncompact *431 district does not compensate for the dismantling of a compact opportunity district.

THE CHIEF JUSTICE claims compactness should be only a factor in the analysis, see *post,* at 507 (opinion concurring in part, concurring in judgment in part, and dissenting in part), but his approach comports neither with our precedents nor with the nature of the right established by § 2. *De Grandy* expressly stated that the first *Gingles* prong looks only to the number of "reasonably compact districts." 512 U. S., at 1008. *Shaw II,* moreover, refused to consider a noncompact district as a possible remedy for a § 2 violation. 517 U. S., at 916. It is true *Shaw II* applied this analysis in the context of a State's using compliance with § 2 as a defense to an equal protection challenge, but the holding was clear: A State cannot remedy a § 2 violation through the creation of a noncompact district. *Ibid. Shaw II* also cannot be distinguished based on the relative location of the remedial district as compared to the district of the alleged violation. The remedial district in *Shaw II* had a 20% overlap with the

district the plaintiffs sought, but the Court stated "[w]e do not think this degree of incorporation could mean [the remedial district] substantially addresses the § 2 violation." *Id.,* at 918; see also *De Grandy, supra,* at 1019 (expressing doubt about the idea that even within the same county, vote dilution in half the county could be compensated for in the other half). The overlap here is not substantially different, as the majority of Latinos who were in the old District 23 are still in the new District 23, but no longer have the opportunity to elect their candidate of choice.

Apart from its conflict with *De Grandy* and *Shaw II,* THE CHIEF JUSTICE's approach has the deficiency of creating a one-way rule whereby plaintiffs must show compactness but States need not (except, it seems, when using § 2 as a defense to an equal
432 protection challenge). THE CHIEF JUSTICE appears to accept that a plaintiff, to make out a § 2 violation, *432 must show he or she is part of a racial group that could form a majority in a reasonably compact district. *Post,* at 505. If, however, a noncompact district cannot make up for the lack of a compact district, then this is equally true whether the plaintiff or the State proposes the noncompact district.

The District Court stated that Plan 1374C created "six *Gingles* Latino" districts, *Session,* 298 F. Supp. 2d, at 498, but it failed to decide whether District 25 was reasonably compact for § 2 purposes. It recognized there was a 300-mile gap between the Latino communities in District 25, and a similarly large gap between the needs and interests of the two groups. *Id.,* at 502. After making these observations, however, it did not make any finding about compactness. *Id.,* at 502-504. It ruled instead that, despite these concerns, District 25 would be an effective Latino opportunity district because the combined voting strength of both Latino groups would allow a Latino-preferred candidate to prevail in elections. *Ibid.* The District Court's general finding of effectiveness cannot substitute for the lack of a finding on compactness, particularly because the District Court measured effectiveness simply by aggregating the voting strength of the two groups of Latinos. *Id.,* at 503-504. Under the District Court's approach, a district would satisfy § 2 no matter how noncompact it was, so long as all the members of a racial group, added together, could control election outcomes.

The District Court did evaluate compactness for the purpose of deciding whether race predominated in the drawing of district lines. The Latinos in the Rio Grande Valley and those in Central Texas, it found, are "disparate communities of interest," with "differences in socio-economic status, education, employment, health, and other characteristics." *Id.,* at 512. The court's conclusion that the relative smoothness of the district lines made the district compact, despite this combining of discrete
433 communities of interest, is inapposite *433 because the court analyzed the issue only for equal protection purposes. In the equal protection context, compactness focuses on the contours of district lines to determine whether race was the predominant factor in drawing those lines. See *Miller* v. *Johnson,* 515 U. S. 900, 916-917 (1995). Under § 2, by contrast, the injury is vote dilution, so the compactness inquiry embraces different considerations. "The first *Gingles* condition refers to the compactness of the minority population, not to the compactness of the contested district." *Vera,* 517 U. S., at 997 (KENNEDY, J., concurring); see also *Abrams,* 521 U. S., at 111 (BREYER, J., dissenting) (compactness to show a violation of equal protection, "which concerns the shape or boundaries of a district, differs from § 2 compactness, which concerns a minority group's compactness"); *Shaw II, supra,* at 916 (the inquiry under § 2 is whether "the minority group is geographically compact" (internal quotation marks omitted)).

While no precise rule has emerged governing § 2 compactness, the "inquiry should take into account `traditional districting principles such as maintaining communities of interest and traditional boundaries.'" *Abrams, supra,* at 92 (quoting *Vera,* 517 U. S., at 977 (plurality opinion)); see also *id.,* at 979 (A district that "reaches out to grab small and apparently isolated minority communities" is not reasonably compact). The recognition of nonracial communities of interest reflects the principle that a State may not "assum[e] from a group of voters' race that they `think alike, share the same political interests, and will prefer the same candidates at the polls.'" *Miller, supra,* at 920 (quoting *Shaw* v. *Reno,* 509 U. S. 630, 647 (1993)). In the absence of this prohibited assumption, there is no basis to believe a district that combines two farflung segments of a racial group with disparate interests provides the opportunity that § 2 requires or that the first *Gingles* condition contemplates. "The purpose of
434 the Voting Rights Act is to prevent discrimination in *434 the exercise of the electoral franchise and to foster our transformation to a society that is no longer fixated on race." *Georgia* v. *Ashcroft,* 539 U. S., at 490; cf. *post,* at 511 (opinion of ROBERTS, C. J.). We do a disservice to these important goals by failing to account for the differences between people of the same race.

While the District Court recognized the relevant differences, by not performing the compactness inquiry, it failed to account for the significance of these differences under § 2. In these cases the District Court's findings regarding the different characteristics, needs, and interests of the Latino community near the Mexican border and the one in and around Austin are well supported and uncontested. Legitimate yet differing communities of interest should not be disregarded in the interest of race. The practical consequence of drawing a district to cover two distant, disparate communities is that one or both groups will be unable to achieve their political goals. Compactness is, therefore, about more than "style points," *post,* at 494 (opinion of ROBERTS, C. J.); it is critical to advancing the ultimate purposes of § 2, ensuring minority groups equal "opportunity . . . to

participate in the political process and to elect representatives of their choice." 42 U. S. C. § 1973(b). (And if it were just about style points, it is difficult to understand why a plaintiff would have to propose a compact district to make out a § 2 claim.) As witnesses who know the south and west Texas culture and politics testified, the districting in Plan 1374C "could make it more difficult for thinly financed Latino-preferred candidates to achieve electoral success and to provide adequate and responsive representation once elected." *Session*, 298 F. Supp. 2d, at 502; see also *id.,* at 503 (Elected officials from the region "testified that the size and diversity of the newly-configured districts could make it more difficult for the constituents in the Rio Grande Valley to control election outcomes"). We do not question the District Court's finding that the groups' combined voting strength
435 would enable *435 them to elect a candidate each prefers to the Anglos' candidate of choice. We also accept that in some cases members of a racial group in different areas—for example, rural and urban communities—could share similar interests and therefore form a compact district if the areas are in reasonably close proximity. See *Abrams, supra*, at 111-112 (BREYER, J., dissenting). When, however, the only common index is race and the result will be to cause internal friction, the State cannot make this a remedy for a § 2 violation elsewhere. We emphasize it is the enormous geographical distance separating the Austin and Mexican-border communities, coupled with the disparate needs and interests of these populations—not either factor alone—that renders District 25 noncompact for § 2 purposes. The mathematical possibility of a racial bloc does not make a district compact.

Since District 25 is not reasonably compact, Plan 1374C contains only five reasonably compact Latino opportunity districts. Plan 1151C, by contrast, created six such districts. The District Court did not find, and the State does not contend, that any of the Latino opportunity districts in Plan 1151C are noncompact. Contrary to THE CHIEF JUSTICE's suggestion, *post,* at 501, moreover, the Latino population in old District 23 is, for the most part, in closer geographic proximity than is the Latino population in new District 25. More importantly, there has been no contention that different pockets of the Latino population in old District 23 have divergent needs and interests, and it is clear that, as set out below, the Latino population of District 23 was split apart particularly because it was becoming so cohesive. The Latinos in District 23 had found an efficacious political identity, while this would be an entirely new and difficult undertaking for the Latinos in District 25, given their geographic and other differences.

Appellants have thus satisfied all three *Gingles* requirements as to District 23, and the creation of new District 25 does not remedy the problem.

436 *436 **C**

We proceed now to the totality of the circumstances, and first to the proportionality inquiry, comparing the percentage of total districts that are Latino opportunity districts with the Latino share of the citizen voting-age population. As explained in *De Grandy,* proportionality is "a relevant fact in the totality of circumstances." 512 U. S., at 1000. It does not, however, act as a "safe harbor" for States in complying with § 2. *Id.,* at 1017-1018; see also *id.,* at 1025 (O'Connor, J., concurring) (proportionality "is *always* relevant evidence in determining vote dilution, but is *never* itself dispositive"); *id.,* at 1027-1028 (KENNEDY, J., concurring in part and concurring in judgment) (proportionality has "some relevance," though "placing undue emphasis upon proportionality risks defeating the goals underlying the Voting Rights Act"). If proportionality could act as a safe harbor, it would ratify "an unexplored premise of highly suspect validity: that in any given voting jurisdiction . . ., the rights of some minority voters under § 2 may be traded off against the rights of other members of the same minority class." *Id.,* at 1019; see also *Shaw II*, 517 U. S., at 916-918.

The State contends that proportionality should be decided on a regional basis, while appellants say their claim requires the Court to conduct a statewide analysis. In *De Grandy,* the plaintiffs "passed up the opportunity to frame their dilution claim in statewide terms." 512 U. S., at 1022. Based on the parties' apparent agreement that the proper frame of reference was the Dade County area, the Court used that area to decide proportionality. *Id.,* at 1022-1023. In these cases, on the other hand, appellants allege an "injury to African American and Hispanic voters throughout the State." Complaint in Civ. Action No. 03C-356 (ED Tex.), pp. 1-2; see also First Amended Complaint in Civ. Action No. 2:03-354 (ED Tex.), pp. 1, 5, 7; Plaintiff's First Amended Complaint in Civ. Action No. 2:03cv354 etc. (ED Tex.), pp. 4-5. The District Court, moreover, expressly considered
437 the statewide *437 proportionality argument. As a result, the question of the proper geographic scope for assessing proportionality now presents itself.

We conclude the answer in these cases is to look at proportionality statewide. The State contends that the seven districts in south and west Texas correctly delimit the boundaries for proportionality because that is the only area of the State where reasonably compact Latino opportunity districts can be drawn. This argument, however, misunderstands the role of proportionality. We have already determined, under the first *Gingles* factor, that another reasonably compact Latino district can

be drawn. The question now is whether the absence of that additional district constitutes impermissible vote dilution. This inquiry requires an "`intensely local appraisal'" of the challenged district. *Gingles*, 478 U. S., at 79 (quoting *Rogers* v. *Lodge*, 458 U. S. 613, 622 (1982)); see also *Gingles*, *supra*, at 101 (O'Connor, J., concurring in judgment). A local appraisal is necessary because the right to an undiluted vote does not belong to the "minority as a group," but rather to "its individual members." *Shaw II*, *supra*, at 917. And a State may not trade off the rights of some members of a racial group against the rights of other members of that group. See *De Grandy*, *supra*, at 1019; *Shaw II*, *supra*, at 916-918. The question is therefore not "whether line-drawing in the challenged area as a whole dilutes minority voting strength," *post,* at 504 (opinion of ROBERTS, C. J.), but whether line-drawing dilutes the voting strength of the Latinos in District 23.

The role of proportionality is not to displace this local appraisal or to allow the State to trade off the rights of some against the rights of others. Instead, it provides some evidence of whether "the political processes leading to nomination or election in the State or political subdivision are not equally open to participation." 42 U. S. C. § 1973(b). For this purpose, the State's seven-
438 district area is arbitrary. It just as easily could have included six or eight districts. Appellants *438 have alleged statewide vote dilution based on a statewide plan, so the electoral opportunities of Latinos across the State can bear on whether the lack of electoral opportunity for Latinos in District 23 is a consequence of Plan 1374C's redrawing of lines or simply a consequence of the inevitable "win some, lose some" in a State with racial bloc voting. Indeed, several of the other factors in the totality of circumstances have been characterized with reference to the State as a whole. *Gingles*, *supra*, at 44-45 (listing Senate Report factors). Particularly given the presence of racially polarized voting—and the possible submergence of minority votes—throughout Texas, it makes sense to use the entire State in assessing proportionality.

Looking statewide, there are 32 congressional districts. The five reasonably compact Latino opportunity districts amount to roughly 16% of the total, while Latinos make up 22% of Texas' citizen voting-age population. (Appellant GI Forum claims, based on data from the 2004 American Community Survey of the U. S. Census Bureau, that Latinos constitute 24.5% of the statewide citizen voting-age population, but as this figure was neither available at the time of the redistricting, nor presented to the District Court, we accept the District Court's finding of 22%.) Latinos are, therefore, two districts shy of proportional representation. There is, of course, no "magic parameter," *De Grandy*, 512 U. S., at 1017, n. 14, and "rough proportionality," *id.,* at 1023, must allow for some deviations. We need not decide whether the two-district deficit in these cases weighs in favor of a § 2 violation. Even if Plan 1374C's disproportionality were deemed insubstantial, that consideration would not overcome the other evidence of vote dilution for Latinos in District 23. "[T]he degree of probative value assigned to proportionality may vary with other facts," *id.,* at 1020, and the other facts in these cases convince us that there is a § 2 violation.

439 District 23's Latino voters were poised to elect their candidate of choice. They were becoming more politically active, *439 with a marked and continuous rise in Spanish-surnamed voter registration. See Lichtman Report, App. 142-143. In successive elections Latinos were voting against Bonilla in greater numbers, and in 2002 they almost ousted him. Webb County in particular, with a 94% Latino population, spurred the incumbent's near defeat with dramatically increased turnout in 2002. See 2004 Almanac 1579. In response to the growing participation that threatened Bonilla's incumbency, the State divided the cohesive Latino community in Webb County, moving about 100,000 Latinos to District 28, which was already a Latino opportunity district, and leaving the rest in a district where they now have little hope of electing their candidate of choice.

The changes to District 23 undermined the progress of a racial group that has been subject to significant voting-related discrimination and that was becoming increasingly politically active and cohesive. Cf. *De Grandy*, *supra*, at 1014 (finding no § 2 violation where "the State's scheme would thwart the historical tendency to exclude Hispanics, not encourage or perpetuate it"); *White* v. *Regester*, 412 U. S. 755, 769 (1973) (looking in the totality of the circumstances to whether the proposed districting would "remedy the effects of past and present discrimination against Mexican-Americans, and to bring the community into the full stream of political life of the county and State by encouraging their further registration, voting, and other political activities" (citation and internal quotation marks omitted)). The District Court recognized "the long history of discrimination against Latinos and Blacks in Texas," *Session*, 298 F. Supp. 2d, at 473, and other courts have elaborated on this history with respect to electoral processes:

> "Texas has a long, well-documented history of discrimination that has touched upon the rights of African-Americans and Hispanics to register, to vote, or to participate otherwise in the electoral process. Devices such
> 440 as the poll tax, an all-white primary system, and *440 restrictive voter registration time periods are an unfortunate part of this State's minority voting rights history. The history of official discrimination in the Texas election process—stretching back to Reconstruction—led to the inclusion of the State as a covered jurisdiction under Section 5 in the 1975 amendments to the Voting Rights Act. Since Texas became a covered jurisdiction, the Department of Justice has frequently interposed objections against the State and its subdivisions." *Vera* v. *Richards*, 861 F. Supp. 1304, 1317 (SD Tex. 1994) (citations omitted).

See also *Vera*, 517 U. S., at 981-982 (plurality opinion); *Regester, supra*, at 767-769. In addition, the "political, social, and economic legacy of past discrimination" for Latinos in Texas, *Session, supra*, at 492, may well "hinder their ability to participate effectively in the political process," *Gingles*, 478 U. S., at 45 (citing Senate Report factors).

Against this background, the Latinos' diminishing electoral support for Bonilla indicates their belief he was "unresponsive to the particularized needs of the members of the minority group." *Ibid.* (same). In essence the State took away the Latinos' opportunity because Latinos were about to exercise it. This bears the mark of intentional discrimination that could give rise to an equal protection violation. Even if we accept the District Court's finding that the State's action was taken primarily for political, not racial, reasons, *Session, supra*, at 508, the redrawing of the district lines was damaging to the Latinos in District 23. The State not only made fruitless the Latinos' mobilization efforts but also acted against those Latinos who were becoming most politically active, dividing them with a district line through the middle of Laredo.

Furthermore, the reason for taking Latinos out of District 23, according to the District Court, was to protect Congressman
441 Bonilla from a constituency that was increasingly voting against him. The Court has noted that incumbency protection *441 can be a legitimate factor in districting, see *Karcher* v. *Daggett*, 462 U. S., at 740, but experience teaches that incumbency protection can take various forms, not all of them in the interests of the constituents. If the justification for incumbency protection is to keep the constituency intact so the officeholder is accountable for promises made or broken, then the protection seems to accord with concern for the voters. If, on the other hand, incumbency protection means excluding some voters from the district simply because they are likely to vote against the officeholder, the change is to benefit the officeholder, not the voters. By purposely redrawing lines around those who opposed Bonilla, the state legislature took the latter course. This policy, whatever its validity in the realm of politics, cannot justify the effect on Latino voters. See *Gingles, supra*, at 45 (citing Senate Report factor of whether "the policy underlying" the State's action "is tenuous"). The policy becomes even more suspect when considered in light of evidence suggesting that the State intentionally drew District 23 to have a nominal Latino voting-age majority (without a citizen voting-age majority) for political reasons. *Session, supra*, at 497. This use of race to create the facade of a Latino district also weighs in favor of appellants' claim.

Contrary to THE CHIEF JUSTICE's suggestion that we are reducing the State's needed flexibility in complying with § 2, see *post,* at 506, the problem here is entirely of the State's own making. The State chose to break apart a Latino opportunity district to protect the incumbent congressman from the growing dissatisfaction of the cohesive and politically active Latino community in the district. The State then purported to compensate for this harm by creating an entirely new district that combined two groups of Latinos, hundreds of miles apart, that represent different communities of interest. Under § 2, the State must be held
442 accountable for the effect of these choices in denying equal opportunity *442 to Latino voters. Notwithstanding these facts, THE CHIEF JUSTICE places great emphasis on the District Court's statement that "new District 25 is `a more effective Latino opportunity district than Congressional District 23 had been.'" *Post,* at 493 (quoting *Session*, 298 F. Supp. 2d, at 503). Even assuming this statement, expressed in the context of summarizing witnesses' testimony, qualifies as a finding of the District Court, two points make it of minimal relevance. First, as previously noted, the District Court measured the effectiveness of District 25 without accounting for the detrimental consequences of its compactness problems. Second, the District Court referred only to how effective District 23 "had been," not to how it would operate today, a significant distinction given the growing Latino political power in the district.

Based on the foregoing, the totality of the circumstances demonstrates a § 2 violation. Even assuming Plan 1374C provides something close to proportional representation for Latinos, its troubling blend of politics and race—and the resulting vote dilution of a group that was beginning to achieve § 2's goal of overcoming prior electoral discrimination—cannot be sustained.

D

Because we hold Plan 1374C violates § 2 in its redrawing of District 23, we do not address appellants' claims that the use of race and politics in drawing that district violates the First Amendment and equal protection. We also need not confront appellants' claim of an equal protection violation in the drawing of District 25. The districts in south and west Texas will have to be redrawn to remedy the violation in District 23, and we have no cause to pass on the legitimacy of a district that must be changed. See *Session*, 298 F. Supp. 2d, at 528 (Ward, J., concurring in part and dissenting in part). District 25, in particular, was formed to compensate for the loss of District 23 as a Latino opportunity district, and there is no reason to believe District 25
443 will remain *443 in its current form once District 23 is brought into compliance with § 2. We therefore vacate the District Court's judgment as to these claims.

IV

Appellants also challenge the changes to district lines in the Dallas area, alleging they dilute African-American voting strength in violation of § 2 of the Voting Rights Act. Specifically, appellants contend that an African-American minority effectively controlled District 24 under Plan 1151C, and that § 2 entitles them to this district.

Before Plan 1374C was enacted, District 24 had elected Anglo Democrat Martin Frost to Congress in every election since 1978. *Id.,* at 481-482. Anglos were the largest racial group in the district, with 49.8% of the citizen voting-age population, and third largest were Latinos, with 20.8%. State's Exh. 57, App. 339. African-Americans were the second-largest group, with 25.7% of the citizen voting-age population, *ibid.,* and they voted consistently for Frost. The new plan broke apart this racially diverse district, assigning its pieces into several other districts.

Accepting that African-Americans would not be a majority of the single-member district they seek, and that African-Americans do not vote cohesively with Hispanics, *Session, supra,* at 484, appellants nonetheless contend African-Americans had effective control of District 24. As the Court has done several times before, we assume for purposes of this litigation that it is possible to state a § 2 claim for a racial group that makes up less than 50% of the population. See *De Grandy,* 512 U. S., at 1009; *Voinovich* v. *Quilter,* 507 U. S. 146, 154 (1993); *Gingles,* 478 U. S., at 46-47, n. 12. Even on the assumption that the first *Gingles* prong can accommodate this claim, however, appellants must show they constitute "a sufficiently large minority to elect their candidate of choice with the assistance of cross-over votes." *Voinovich, supra,* at 158 (emphasis deleted).

444 *444 The relatively small African-American population can meet this standard, according to appellants, because its members constituted 64% of the voters in the Democratic primary. Since a significant number of Anglos and Latinos voted for the Democrat in the general election, the argument goes, African-American control of the primary translated into effective control of the entire election.

The District Court found, however, that African-Americans could not elect their candidate of choice in the primary. In support of this finding, it relied on testimony that the district was drawn for an Anglo Democrat, the fact that Frost had no opposition in any of his primary elections since his incumbency began, and District 24's demographic similarity to another district where an African-American candidate failed when he ran against an Anglo. *Session,* 298 F. Supp. 2d, at 483-484. "In short, that Anglo Democrats control this district is," according to the District Court, "the most rational conclusion." *Id.,* at 484.

Appellants fail to demonstrate clear error in this finding. In the absence of any contested Democratic primary in District 24 over the last 20 years, no obvious benchmark exists for deciding whether African-Americans could elect their candidate of choice. The fact that African-Americans voted for Frost—in the primary and general elections—could signify he is their candidate of choice. Without a contested primary, however, it could also be interpreted to show (assuming racial bloc voting) that Anglos and Latinos would vote in the Democratic primary in greater numbers if an African-American candidate of choice were to run, especially given Texas' open primary system. The District Court heard trial testimony that would support both explanations, and we cannot say that it erred in crediting the testimony that endorsed the latter interpretation. Compare App. 242-243 (testimony of Tarrant County Precinct Administrator that Frost is the "favored candidate of the African-American community" and that he
445 has gone unopposed in primary challenges *445 because he "serves [the African-American community's] interests") with *id.,* at 262-264 (testimony of Congresswoman Eddie Bernice Johnson that District 24 was drawn for an Anglo Democrat (Martin Frost, in particular) in 1991 by splitting a minority community), and *id.,* at 277-280 (testimony of State Representative Ron Wilson that African-Americans did not have the ability to elect their preferred candidate, particularly an African-American candidate, in District 24 and that Anglo Democrats in such "influence [d]istricts" were not fully responsive to the needs of the African-American community).

The analysis submitted by appellants' own expert was also inconsistent. Of the three elections for statewide office he examined, in District 24 the African-American candidate of choice would have won one, lost one, and in the third the African-American vote was split. See Lichtman Report, *id.,* at 75-76, 92-96; State's Exh. 20 in Civ. Action No. 2:03-CV-354 (ED Tex.), p. 138; State's Exh. 21 in Civ. Action No. 2:03-CV-354 (ED Tex.). The District Court committed no clear error in rejecting this questionable showing that African-Americans have the ability to elect their candidate of choice in favor of other evidence that an African-American candidate of choice would not prevail. See *Anderson* v. *Bessemer City,* 470 U. S. 564, 574 (1985) ("Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous").

That African-Americans had influence in the district, *Session, supra,* at 485, does not suffice to state a § 2 claim in these cases. The opportunity "to elect representatives of their choice," 42 U. S. C. § 1973(b), requires more than the ability to influence the outcome between some candidates, none of whom is their candidate of choice. There is no doubt African-Americans preferred

Martin Frost to the Republicans who opposed him. The fact that African-Americans preferred Frost to some others does not, 446 however, make him *446 their candidate of choice. Accordingly, the ability to aid in Frost's election does not make the old District 24 an African-American opportunity district for purposes of § 2. If § 2 were interpreted to protect this kind of influence, it would unnecessarily infuse race into virtually every redistricting, raising serious constitutional questions. See *Georgia v. Ashcroft*, 539 U. S., at 491 (KENNEDY, J., concurring).

Appellants respond by pointing to *Georgia v. Ashcroft*, where the Court held that the presence of influence districts is a relevant consideration under § 5 of the Voting Rights Act. The inquiry under § 2, however, concerns the opportunity "to elect representatives of their choice," 42 U. S. C. § 1973(b), not whether a change has the purpose or effect of "denying or abridging the right to vote," § 1973c. *Ashcroft* recognized the differences between these tests, 539 U. S., at 478, and concluded that the ability of racial groups to elect candidates of their choice is only one factor under § 5, *id.,* at 480. So while the presence of districts "where minority voters may not be able to elect a candidate of choice but can play a substantial, if not decisive, role in the electoral process" is relevant to the § 5 analysis, *id.,* at 482, the lack of such districts cannot establish a § 2 violation. The failure to create an influence district in these cases thus does not run afoul of § 2 of the Voting Rights Act.

Appellants do not raise a district-specific political gerrymandering claim against District 24. Even if the claim were cognizable as part of appellants' statewide challenge, it would be unpersuasive. Just as for the statewide claim, appellants would lack any reliable measure of partisan fairness. JUSTICE STEVENS suggests the burden on representational rights can be measured by comparing the success of Democrats in old District 24 with their success in the new districts they now occupy. *Post,* at 475-476 (opinion concurring in part and dissenting in part). There is no reason, however, why the old district has any special claim to 447 fairness. In fact, old District 24, no less than the old redistricting plan as *447 a whole, was formed for partisan reasons. See *Session*, 298 F. Supp. 2d, at 484; see also *Balderas,* App. E to Juris. Statement 208a. Furthermore, JUSTICE STEVENS' conclusion that the State has not complied with § 5 of the Voting Rights Act, *post,* at 478-481—effectively overruling the Attorney General without briefing, argument, or a lower court opinion on the issue—does not solve the problem of determining a reliable measure of impermissible partisan effect.

* * *

We reject the statewide challenge to Texas' redistricting as an unconstitutional political gerrymander and the challenge to the redistricting in the Dallas area as a violation of § 2 of the Voting Rights Act. We do hold that the redrawing of lines in District 23 violates § 2 of the Voting Rights Act. The judgment of the District Court is affirmed in part, reversed in part, and vacated in part, and the cases are remanded for further proceedings.

It is so ordered.

JUSTICE STEVENS, with whom JUSTICE BREYER joins as to Parts I and II, concurring in part and dissenting in part.

This is a suit in which it is perfectly clear that judicially manageable standards enable us to decide the merits of a statewide challenge to a political gerrymander. Applying such standards, I shall explain why the wholly unnecessary replacement of the neutral plan fashioned by the three-judge court in *Balderas v. Texas*, Civ. Action No. 6:01CV158 (ED Tex., Nov. 14, 2001) *(per curiam)* (Plan 1151C or *Balderas* Plan) with Plan 1374C, which creates districts with less compact shapes, violates the Voting Rights Act of 1965, and fragments communities of interest—all for purely partisan purposes—violated the State's constitutional duty to govern impartially. Prior misconduct by the Texas Legislature neither excuses nor justifies that violation. Accordingly, 448 while I join the Court's decision to invalidate District 23, I *448 would hold that Plan 1374C is entirely invalid and direct the District Court to reinstate Plan 1151C. Moreover, as I shall explain, even if the remainder of the plan were valid, the cracking of *Balderas* District 24 would still be unconstitutional.

I

The maintenance of existing district boundaries is advantageous to both voters and candidates. Changes, of course, must be made after every census to equalize the population of each district or to accommodate changes in the size of a State's congressional delegation. Similarly, changes must be made in response to a finding that a districting plan violates § 2 or § 5 of the Voting Rights Act, 42 U. S. C. §§ 1973, 1973c. But the interests in orderly campaigning and voting, as well as in maintaining communication between representatives and their constituents, underscore the importance of requiring that any decision to redraw district boundaries—like any other state action that affects the electoral process—must, at the very least, serve some legitimate governmental purpose. See, *e. g., Burdick v. Takushi*, 504 U. S. 428, 434, 440 (1992); *id.,* at 448-450 (KENNEDY, J.,

joined by Blackmun and STEVENS, JJ., dissenting). A purely partisan desire "to minimize or cancel out the voting strength of racial or political elements of the voting population," *Fortson* v. *Dorsey*, 379 U. S. 433, 439 (1965), is not such a purpose. Because a desire to minimize the strength of Texas Democrats was the sole motivation for the adoption of Plan 1374C, see *Session* v. *Perry*, 298 F. Supp. 2d 451, 470, 472 (ED Tex. 2004) *(per curiam)*, the plan cannot withstand constitutional scrutiny.

The districting map that Plan 1374C replaced, Plan 1151C, was not only manifestly fair and neutral, it may legitimately be described as a milestone in Texas' political history because it put an end to a long history of Democratic misuse of power in that
449 State. For decades after the Civil War, the political party associated with the former Commander in *449 Chief of the Union Army attracted the support of former slaves and a handful of "carpetbaggers," but had no significant political influence in Texas. The Democrats maintained their political power by excluding black voters from participating in primary elections, see, *e. g.*, *Smith* v. *Allwright*, 321 U. S. 649, 656-661 (1944), by the artful management of multimember electoral schemes, see, *e. g.*, *White* v. *Regester*, 412 U. S. 755, 765-770 (1973), and, most recently, by outrageously partisan gerrymandering, see *ante*, at 410-411 (opinion of KENNEDY, J.); *Bush* v. *Vera*, 517 U. S. 952, 987-990 (1996) (appendixes in plurality opinion), *id.*, at 1005-1007, 1042-1045 (STEVENS, J., dissenting). Unfortunately, some of these tactics are not unique to Texas Democrats; the apportionment scheme they devised in the 1990's is only one example of the excessively gerrymandered districting plans that parties with control of their States' governing bodies have implemented in recent years. See, *e. g.*, *Cox* v. *Larios*, 542 U. S. 947, 947-950 (2004) (STEVENS, J., joined by BREYER, J., concurring) (Democratic gerrymander in Georgia); *Vieth* v. *Jubelirer*, 541 U. S. 267, 272 (2004) (plurality opinion); *id.*, at 342 (STEVENS, J., dissenting) (Republican gerrymander in Pennsylvania); *Karcher* v. *Daggett*, 462 U. S. 725, 744 (1983) (Democratic gerrymander in New Jersey); *Badham* v. *Eu*, 694 F. Supp. 664, 666 (ND Cal. 1988), summarily aff'd, 488 U. S. 1024 (1989) (Democratic gerrymander in California).

Despite the Texas Democratic Party's sordid history of manipulating the electoral process to perpetuate its stranglehold on political power, the Texas Republican Party managed to become the State's majority party by 2002. If, after finally achieving political strength in Texas, the Republicans had adopted a new plan in order to remove the excessively partisan Democratic gerrymander of the 1990's, the decision to do so would unquestionably have been supported by a neutral justification. But that
450 is not what happened. Instead, as the following discussion of the relevant events that *450 transpired in Texas following the release of the 2000 census data demonstrates, Texas Republicans abandoned a neutral apportionment map for the sole purpose of manipulating district boundaries to maximize their electoral advantage and thus create their own impermissible stranglehold on political power.

By 2001, Texas Republicans had overcome many of the aforementioned tactics designed to freeze the Democrats' status as the State's dominant party, and Republicans controlled the governorship and the State Senate. Democrats, however, continued to constitute a majority of the State House of Representatives. In March of that year, the results of the 2000 decennial census revealed that, as a result of its population growth, Texas was entitled to two additional seats in the United States House of Representatives, bringing the size of the Texas congressional delegation to 32. Texas, therefore, was required to draw 32 equipopulous districts to account for its additional representation and to comply with the one-person, one-vote mandate of Article I, § 2, see, *e. g.*, *Karcher*, 462 U. S. 725. Under Texas law, the Texas Legislature was required to draw these new districts. See *Session*, 298 F. Supp. 2d, at 457-458.

The Texas Legislature, divided between a Republican Senate and a Democratic House, did not reach agreement on a new congressional map in the regular legislative session, and Governor Rick Perry declined to call a special session. Litigation in the Texas state courts also failed to result in a plan, as the Texas Supreme Court vacated the map created by a state trial judge. See *Perry* v. *Del Rio*, 67 S. W. 3d 85 (2001). This left a three-judge Federal District Court in the Eastern District of Texas with "`the unwelcome obligation of performing in the legislature's stead.'" *Balderas* v. *Texas*, Civ. Action No. 6:01CV158 (Nov. 14, 2001) *(per curiam)*, App. E to Juris. Statement in No. 05-276, p. 202a (hereinafter App. to Juris. Statement) (quoting *Connor* v. *Finch*, 431 U. S. 407, 415 (1977)).

451 *451 After protracted proceedings, which included the testimony of an impartial expert as well as representatives of interested groups supporting different plans, the court prepared its own plan. "Conscious that the primary responsibility for drawing congressional districts is given to political branches of government, and hesitant to `und[o] the work of one political party for the benefit of another,' the three-judge *Balderas* court sought to apply `only "neutral" redistricting standards' when drawing Plan 1151C." *Ante*, at 412 (opinion of KENNEDY, J.) (quoting *Henderson* v. *Perry*, 399 F. Supp. 2d 756, 768 (ED Tex. 2005)). As the court explained, it started with a blank map of Texas, drew in the existing districts protected by the Voting Rights Act, located the new Districts 31 and 32 where the population growth that produced them had occurred, and then applied the neutral criteria of "compactness, contiguity, and respecting county and municipal boundaries." App. to Juris. Statement 205a. See *id.*, at 206a-209a. The District Court purposely "eschewed an effort to treat old lines as an independent locator," and concluded that its plan had done much "to end most of the below-the-surface `ripples' of the 1991 plan and the myriad of

submissions before us. For example, the patently irrational shapes of Districts 5 and 6 under the 1991 plan, widely cited as the most extreme but successful gerrymandering in the country, are no more." *Id.,* at 207a-208a.

At the conclusion of this process, the court believed that it had fashioned a map that was "likely to produce a congressional delegation roughly proportional to the party voting breakdown across the state." *Id.,* at 209a. Indeed, reflecting the growing strength of the Republican Party, the District Court's plan, Plan 1151C, offered that party an advantage in 20 of the 32 congressional seats. See *Session,* 298 F. Supp. 2d, at 471 (describing Plan 1151C). The State's expert in this litigation testified that the *Balderas* Plan was not biased in favor of Democrats and that it was "[m]aybe slightly" biased in favor of Republicans.
452 App. 224 (deposition *452 of Ronald Keith Gaddie, Ph.D.). Although groups of Latino voters challenged Plan 1151C on appeal, neither major political party did so, and the State of Texas filed a motion asking this Court to affirm the District Court's judgment, which we did, *Balderas* v. *Texas,* 536 U. S. 919 (2002).

In the 2002 congressional elections, however, Republicans were not able to capitalize on the advantage that the *Balderas* Plan had provided them. A number of Democratic incumbents were able to attract the votes of ticket-splitters (individuals who voted for candidates from one party in statewide elections and for a candidate from a different party in congressional elections), and thus won elections in some districts that favored Republicans. As a result, Republicans carried only 15 of the districts drawn by the *Balderas* court.[1]

While the Republicans did not do as well as they had hoped in elections for the United States House of Representatives, they made gains in the Texas House of Representatives and won a majority of seats in that body. This gave Texas Republicans control over both bodies of the state legislature, as well as the Governor's mansion, for the first time since Reconstruction.

453 With full control of the State's legislative and executive branches, the Republicans "decided to redraw the state's *453 congressional districts solely for the purpose of seizing between five and seven seats from Democratic incumbents." *Session,* 298 F. Supp. 2d, at 472 (internal quotation marks omitted). According to former Lieutenant Governor Bill Ratliff, a highly regarded Republican member of the State Senate, "political gain for the Republicans was 110% of the motivation for the Plan, . . . it was `the entire motivation.'" *Id.,* at 473 (quoting trial transcript). Or, as the District Court stated in the first of its two decisions in this litigation, "[t]here is little question but that the single-minded purpose of the Texas Legislature in enacting Plan 1374C was to gain partisan advantage." *Id.,* at 470. See also *ante,* at 412 (opinion of KENNEDY, J.) (quoting District Court's conclusion). Indeed, as the State itself argued before the District Court: "The overwhelming evidence demonstrated that partisan gain was the motivating force behind the decision to redistrict in 2003." State Defendants' Post-Trial Brief in No. 2:03-CV-354 (ED Tex.), p. 51 (hereinafter State Post-Trial Brief).

This desire for political gain led to a series of dramatic confrontations between Republicans and Democrats, and ultimately resulted in the adoption of a plan that violated the Voting Rights Act. The legislature did not pass a new map in the regular 2003 session, in part because Democratic House members absented themselves and thus denied the body a quorum. Governor Perry then called a special session to take up congressional redistricting—the same step he had declined to take in 2001 after the release of the decennial census figures, when Republicans lacked a majority in the House. During the first special session, the House approved a new congressional map, but the Senate's longstanding tradition requiring two-thirds of that body to support a measure before the full Senate will consider it allowed Democrats to block the plan.

454 Lieutenant Governor Dewhurst then announced that he would suspend operation of the two-thirds rule in any future *454 special session considering congressional redistricting. Nonetheless, in a second special session, Senate Democrats again prevented the passage of a new districting map by leaving the State and depriving the Senate of a quorum. When a lone Senate Democrat returned to Texas, Governor Perry called a third special session to consider congressional redistricting.

During that third special session, the State Senate and the State House passed maps that would have apparently avoided any violation of the Voting Rights Act because they would have, *inter alia,* essentially preserved *Balderas* District 23, a majority-Latino district in southwest Texas, and *Balderas* District 24, a majority-minority district in the Dallas-Fort Worth area, where black voters constituted a significant majority of voters in the Democratic primary and usually elected their candidate of choice in the general election. Representative Phil King, the redistricting legislation's chief sponsor in the Texas House, had previously proposed fragmenting District 24, but, after lawyers reviewed the map, King expressed concern that redrawing District 24 might violate the Voting Rights Act, and he drafted a new map that left District 24 largely unchanged.

Nonetheless, the conferees seeking to reconcile the House and Senate plans produced a map that, as part of its goal of maximizing Republican political advantage, significantly altered both Districts 23 and 24 as they had existed in the *Balderas* Plan. *Balderas* District 23 was extended north to take in roughly 100,000 new people who were predominately Anglo and

Republican, and was also moved west, thus splitting Webb County and the city of Laredo, and pushing roughly 100,000 people who were predominately Latino and Democratic into an adjacent district. *Session*, 298 F. Supp. 2d, at 488-489. Black voters who previously resided in *Balderas* District 24 were fragmented into five new districts, each of which is predominately Anglo
455 and Republican. See App. 104-106. Representative King testified at trial that *455 District 24 was cracked even though cracking the district was not "`the path of least resistance'" in terms of avoiding Voting Rights Act liability because leaving *Balderas* District 24 intact would not "accomplish our political objectives." State Post-Trial Brief 51-52 (quoting transcript). This map was ultimately enacted into law as Plan 1374C.

The overall effect of Plan 1374C was to shift more than *eight million* Texans into new districts, and to split more counties into more pieces than the *Balderas* Plan. Moreover, the 32 districts in Plan 1374C are, on average, much less compact under either of two standard measures than their counterparts had been under the *Balderas* Plan. See App. 177-178 (expert report of Professor Gaddie).[2]

Numerous parties filed suit in federal court challenging Plan 1374C on the grounds that it violated § 2 of the Voting Rights Act and that it constituted an unconstitutional partisan gerrymander. A three-judge panel—two of whom also were members of the *Balderas* court—rejected these challenges, over Judge Ward's partial dissent on the § 2 claims. See *Session*, 298 F. Supp. 2d 451. Responding to plaintiffs' appeals, we remanded for reconsideration in light of *Vieth*, 541 U. S. 267. See 543 U. S. 941 (2004).

In a characteristically thoughtful opinion written by Judge Higginbotham, the District Court again rejected all challenges to the constitutionality of Plan 1374C. See *Henderson*, 399 F. Supp. 2d 756. It correctly found that the Constitution does not prohibit a state legislature from redrawing congressional districts in the middle of a census cycle, see *id.,* at 766, and it also correctly recognized that this Court has not yet endorsed clear standards for judging the validity of partisan gerrymanders, see *id.,* at
456 760-762. Because the *456 District Court's original decision, and its reconsideration of the case in the light of the several opinions in *Vieth,* are successive chapters in the saga that began with *Balderas,* it is appropriate to quote this final comment from that opinion before addressing the principal question that is now presented. The *Balderas* court concluded:

> "Finally, to state directly what is implicit in all that we have said: political gerrymandering, a purely partisan exercise, is inappropriate for a federal court drawing a congressional redistricting map. Even at the hands of a legislative body, political gerrymandering is much a bloodfeud, in which revenge is exacted by the majority against its rival. We have left it to the political arena, as we must and wisely should. We do so because our role is limited and not because we see gerrymandering as other than what it is: an abuse of power that, at its core, evinces a fundamental distrust of voters, serving the self-interest of the political parties at the expense of the public good." App. to Juris. Statement 209a-210a (footnote omitted).

II

The unique question of law that is raised in this appeal is one that the Court has not previously addressed. That narrow question is whether it was unconstitutional for Texas to replace a lawful districting plan "in the middle of a decade, for the sole purpose of maximizing partisan advantage." Juris. Statement in No. 05-276, p. i. This question is both different from, and simpler than, the principal question presented in *Vieth,* in which the "`lack of judicially discoverable and manageable standards'" prevented the plurality from deciding the merits of a statewide challenge to a political gerrymander. 541 U. S., at 277-278.

As the State points out, "in every political-gerrymandering claim the Court has considered, the focus has been on the *map*
457 itself, not on the decision to create the map in the first *457 place." Brief for State Appellees 33. In defense of the map itself, rather than the basic decision whether to draw the map in the first place, the State notes that Plan 1374C's district borders frequently follow county lines and other neutral criteria. At what the State describes as the relevant "level of granularity," the State correctly points out that appellants have not even attempted to argue that every district line was motivated solely for partisan gain. *Ibid.* See also *ante,* at 417 (opinion of KENNEDY, J.) (noting that "partisan aims did not guide every line" in Plan 1374C). Indeed, the multitude of "granular" decisions that are made during redistricting was part of why the *Vieth* plurality concluded, in the context of a statewide challenge to a redistricting plan promulgated in response to a legal obligation to redistrict, that there are no manageable standards to govern whether the predominant motivation underlying the entire redistricting map was partisan. See 541 U. S., at 285. But see *id.,* at 355 (BREYER, J., dissenting) (arguing that there are judicially manageable standards to assess statewide districting challenges even when a plan is enacted in response to a legal obligation to redistrict).

Unlike *Vieth,* the narrow question presented by the statewide challenge in this litigation is whether the State's decision to draw the map in the first place, when it was under no legal obligation to do so, was permissible. It is undeniable that identifying the motive for making that basic decision is a readily manageable judicial task. See *Gomillion* v. *Lightfoot,* 364 U. S. 339, 341 (1960) (noting that plaintiffs' allegations, if true, would establish by circumstantial evidence "tantamount for all practical purposes to a mathematical demonstration," that redistricting legislation had been enacted "solely" to segregate voters along racial lines); cf. *Personnel Administrator of Mass.* v. *Feeney,* 442 U. S. 256, 276-280 (1979) (analyzing whether the purpose of a law was to discriminate against women). Indeed, although the Constitution places no *per se* ban on midcycle redistricting,
458 *458 a legislature's decision to redistrict in the middle of the census cycle, when the legislature is under no legal obligation to do so, makes the judicial task of identifying the legislature's motive simpler than it would otherwise be. As JUSTICE BREYER has pointed out, "the presence of midcycle redistricting, for any reason, raises a fair inference that partisan machinations played a major role in the map-drawing process." *Vieth,* 541 U. S., at 367 (dissenting opinion).

The conclusion that courts can easily identify the motive for redistricting when the legislature is under no legal obligation to act is reinforced by the record in this very case. The District Court unambiguously identified the sole purpose behind the decision to promulgate Plan 1374C: a desire to maximize partisan advantage. See *Session,* 298 F. Supp. 2d, at 472 ("It was clear from the evidence" that Republicans "`decided to redraw the state's congressional districts solely for the purpose of seizing between five and seven seats from Democratic incumbents'" (quoting *amicus* brief filed in *Vieth*)); 298 F. Supp. 2d, at 470 ("There is little question but that the single-minded purpose of the Texas Legislature in enacting Plan 1374C was to gain partisan advantage"). It does not matter whether the District Court's description of that purpose qualifies as a specific finding of fact because it is perfectly clear that there is more than ample evidence in the record to support such a finding. This evidence includes: (1) testimony from state legislators; (2) the procedural irregularities described above that accompanied the adoption of Plan 1374C, including the targeted abolition of the longstanding two-thirds rule, designed to protect the rights of the minority party, in the Texas Senate; (3) Plan 1374C's significant departures from the neutral districting criteria of compactness and respect for county lines; (4) the plan's excessive deviations from prior districts, which interfere with the development of strong relationships between Members of Congress and their constituents; and (5) the plan's failure to comply with the Voting Rights Act. Indeed,
459 *459 the State itself conceded that "[t]he overwhelming evidence demonstrated that partisan gain was the motivating force behind the decision to redistrict in 2003." State Post-Trial Brief 51. In my judgment, there is not even a colorable basis for contending that the relevant intent—in this case a purely partisan intent[3]—cannot be identified on the basis of admissible evidence in the record.[4]

Of course, the conclusions that courts are fully capable of analyzing the intent behind a decision to redistrict, and that desire for partisan gain was the sole factor motivating the decision to redistrict at issue here, do not resolve the question whether proof of a single-minded partisan intent is sufficient to establish a constitutional violation.

On the merits of that question, the State seems to assume that our decision in *Upham* v. *Seamon,* 456 U. S. 37 (1982) *(per*
460 *curiam),* has already established the legislature's right to replace a court-ordered plan with a plan drawn for purely *460 partisan purposes. JUSTICE KENNEDY ultimately indulges in a similar assumption, relying on *Upham* for the proposition that "our decisions have assumed that state legislatures are free to replace court-mandated remedial plans by enacting redistricting plans of their own." *Ante,* at 416. JUSTICE KENNEDY recognizes that "[j]udicial respect for legislative plans, however, cannot justify legislative reliance on improper criteria for districting determinations." *Ibid.* But JUSTICE KENNEDY then incorrectly concludes that the singular intent to maximize partisan advantage is not, in itself, such an improper criterion. *Ante,* at 417-418.

This reliance on *Upham* overlooks critical distinctions between the redistricting plan the District Court drew in *Upham* and the redistricting plan the District Court drew in *Balderas.* The judicial plan in *Upham* was created to provide an interim response to an objection by the Attorney General that two contiguous districts in a plan originally drafted by the Texas Legislature violated § 5 of the Voting Rights Act. We concluded that, in fashioning its interim remedy, the District Court had erroneously "substituted its own reapportionment preferences for those of the state legislature." 456 U. S., at 40. We held that when judicial relief was necessary because a state legislature had failed "`to reapportion according to federal constitutional [or statutory] requisites in a timely fashion after having had an adequate opportunity to do so,'" the federal court should, as much as possible "`follow the policies and preferences of the State,'" in creating a new map. *Id.,* at 41 (quoting *White* v. *Weiser,* 412 U. S. 783, 794-795 (1973)). We did not suggest that federal courts should honor partisan concerns, but rather identified the relevant state policies as those "`expressed in statutory and constitutional provisions or in the reapportionment plans proposed by the state legislature, whenever adherence to state policy does not detract from the requirements of the Federal Constitution.'" *Upham,*
461 456 U. S., at 41 (quoting *White,* 412 U. S., at 794-795). Because the District Court in *461 *Upham* had exceeded its authority in drawing a new districting map, we made clear that the legislature was authorized to remedy the § 5 violation with a map of its own choosing. See 456 U. S., at 44. *Upham,* then, stands only for the proposition that a state legislature is authorized to redraw

a court-drawn congressional districting map when a district court has exceeded its remedial authority. *Upham* does not stand for the proposition that, after a State embraces a valid, neutral court-drawn plan by asking this Court to affirm the opinion creating that plan, the State may then redistrict for the sole purpose of disadvantaging a minority political party.

Indeed, to conclude otherwise would reflect a fundamental misunderstanding of the reason why we have held that state legislatures, rather than federal courts, should have the primary task of creating apportionment plans that comport with federal law. We have so held because "a state legislature is the institution that is by far the best situated to identify and then reconcile traditional state policies" with the requirements of federal law, *Finch*, 431 U. S., at 414-415, not because we wish to supply a dominant party with an opportunity to disadvantage its political opponents. Indeed, a straightforward application of settled constitutional law leads to the inescapable conclusion that the State may not decide to redistrict if its sole motivation is "to minimize or cancel out the voting strength of racial *or political* elements of the voting population," *Fortson*, 379 U. S., at 439 (emphasis added).

The requirements of the Federal Constitution that limit the State's power to rely exclusively on partisan preferences in drawing district lines are the Fourteenth Amendment's prohibition against invidious discrimination, and the First Amendment's protection of citizens from official retaliation based on their political affiliation. The equal protection component of the Fourteenth Amendment requires actions taken by the sovereign to be supported by some legitimate interest, and further establishes that a
462 bare desire to harm *462 a politically disfavored group is not a legitimate interest. See, *e. g., Cleburne* v. *Cleburne Living Center, Inc.*, 473 U. S. 432, 447 (1985). Similarly, the freedom of political belief and association guaranteed by the First Amendment prevents the State, absent a compelling interest, from "penalizing citizens because of their participation in the electoral process,. . . their association with a political party, or their expression of political views." *Vieth*, 541 U. S., at 314 (KENNEDY, J., concurring in judgment) (citing *Elrod* v. *Burns*, 427 U. S. 347 (1976) (plurality opinion)). These protections embodied in the First and Fourteenth Amendments reflect the fundamental duty of the sovereign to govern impartially. *E. g., Lehr* v. *Robertson*, 463 U. S. 248, 265 (1983); *New York City Transit Authority* v. *Beazer*, 440 U. S. 568 (1979).

The legislature's decision to redistrict at issue in this litigation was entirely inconsistent with these principles. By taking an action for the sole purpose of advantaging Republicans and disadvantaging Democrats, the State of Texas violated its constitutional obligation to govern impartially. "If a State passed an enactment that declared `All future apportionment shall be drawn so as most to burden Party X's rights to fair and effective representation, though still in accord with one-person, one-vote principles,' we would surely conclude the Constitution had been violated." *Vieth*, 541 U. S., at 312 (KENNEDY, J., concurring in judgment).

III

Relying solely on *Vieth,* JUSTICE KENNEDY maintains that even if legislation is enacted based solely on a desire to harm a politically unpopular minority, this fact is insufficient to establish unconstitutional partisan gerrymandering absent proof that the legislation did in fact burden "the complainants' representative rights." *Ante,* at 418. This conclusion—which clearly goes to the merits, rather than the manageability, of a partisan gerrymandering claim—is not only inconsistent with the constitutional
463 requirement that *463 state action must be supported by a legitimate interest, but also provides an insufficient response to appellants' claim on the merits.

JUSTICE KENNEDY argues that adopting "the modified sole-intent test" could "encourage partisan excess at the outset of the decade, when a legislature redistricts pursuant to its decennial constitutional duty and is then immune from the charge of sole motivation." *Ante,* at 419, 420. But this would be a problem of the Court's own making. As the decision in *Cox* v. *Larios*, 542 U. S. 947, demonstrates, there are, in fact, readily manageable judicial standards that would allow injured parties to challenge excessive (and unconstitutional) partisan gerrymandering undertaken in response to the release of the decennial census data. [5] See also *Vieth*, 541 U. S., at 328-339 (STEVENS, J., dissenting); *id.,* at 347-353 (SOUTER, J., joined by GINSBURG, J., dissenting); *id.,* at 365-367 (BREYER, J., dissenting). Justice KENNEDY's concern about a heightened incentive to engage in such excessive partisan gerrymandering would be avoided if the Court were willing to enforce those standards.

464 *464 In any event, JUSTICE KENNEDY's additional requirement that there be proof that the gerrymander did in fact burden the complainants' representative rights is clearly satisfied by the record in this litigation. Indeed, the Court's accurate exposition of the reasons why the changes to District 23 diluted the voting rights of Latinos who remain in that district simultaneously explains why those changes also disadvantaged Democratic voters and thus demonstrates that the effects of a political gerrymander can be evaluated pursuant to judicially manageable standards.

In my judgment the record amply supports the conclusion that Plan 1374C not only burdens the minority party in District 23, but also imposes a severe statewide burden on the ability of Democratic voters and politicians to influence the political process.[6]

In arguing that Plan 1374C does not impose an unconstitutional burden on Democratic voters and candidates, the State takes the position that the plan has resulted in an equitable distribution of political power between the State's two principal political parties. The State emphasizes that in the 2004 elections—held pursuant to Plan 1374C—Republicans won 21 of 32, or 66%, of the congressional seats. That same year, Republicans carried 58% of the vote in statewide elections. Admittedly, these numbers do suggest that the State's congressional delegation was "roughly proportional" to the parties' share of the statewide vote, Brief for State Appellees 44, particularly in light of the fact that our electoral system tends to produce a "seat bonus" in which a party that wins a majority of the vote generally wins an even larger majority of the seats, see Brief for Alan Heslop et al. as *Amici Curiae* (describing the seat bonus phenomenon). *465 Cf. *ante,* at 419 (opinion of KENNEDY, J.) (arguing that, compared to the redistricting plan challenged in *Vieth,* "Plan 1374C can be seen as making the party balance more congruent to statewide party power").

That Plan 1374C produced a "roughly proportional" congressional delegation in 2004 does not, however, answer the question whether the plan has a discriminatory effect against Democrats. As appellants point out, whether a districting map is biased against a political party depends upon the bias in the map itself—in other words, it depends upon the opportunities that the map offers each party, regardless of how candidates perform in a given year. And, as the State's expert found in this litigation, Plan 1374C clearly has a discriminatory effect in terms of the opportunities it offers the two principal political parties in Texas. Indeed, that discriminatory effect is severe.

According to Professor Gaddie, the State's expert, Plan 1374C gives Republicans an advantage in 22 of 32 congressional seats. The plaintiffs' expert, Professor Alford, who had been cited favorably by the *Balderas* Court as having applied a "neutral approach" to redistricting in that litigation, App. to Juris. Statement 207a, agreed. He added that, in his view, the only surprise from the 2004 elections was "how far things moved" toward achieving a 22-to-10 pro-Republican split "in a single election year," *id.,* at 226a (declaration of John R. Alford, Ph.D.).[7] But this 22-to-10 advantage does not depend on Republicans winning the 58% share of the statewide vote that they received in 2004. Instead, *466 according to Professor Gaddie, Republicans would be likely to carry 22 of 32 congressional seats if they won only 52% of the statewide vote. App. 216, 229. Put differently, Plan 1374C ensures that, even if the Democratic Party succeeds in convincing 10% of the people who voted for Republicans in the last statewide elections to vote for Democratic congressional candidates,[8] which would constitute a major electoral shift, there is unlikely to be *any* change in the number of congressional seats that Democrats win. Moreover, Republicans would still have an overwhelming advantage if Democrats achieved full electoral parity. According to Professor Gaddie's analysis, Republicans would be likely to carry 20 of the 32 congressional seats even if they only won 50% (or, for that matter, 49%) of the statewide vote. *Id.,* at 216, 229-230. This demonstrates that Plan 1374C is inconsistent with the symmetry standard, a measure social scientists use to assess partisan bias, which is undoubtedly "a reliable standard" for measuring a "burden . . . on the complainants' representative rights," *ante,* at 418 (opinion of KENNEDY, J.).

The symmetry standard "requires that the electoral system treat similarly-situated parties equally, so that each receives the same fraction of legislative seats for a particular vote percentage as the other party would receive if it had received the same percentage." Brief for Gary King et al. as *Amici Curiae* 4-5. This standard is widely accepted by scholars as providing a measure of partisan fairness in electoral systems. See, *e. g.,* Tufte, The Relationship Between Seats and Votes in Two-Party Systems, 67 Am. Pol. Sci. Rev. 540, 542-543 (1973); Gelman & King, Enhancing Democracy Through Legislative Redistricting, 88 Am. Pol. Sci. Rev. 541, 545 (1994); Thompson, Election Time: Normative Implications of Temporal Properties of the Electoral Process in the *467 United States, 98 Am. Pol. Sci. Rev. 51, 53, and n. 7 (2004); Engstrom & Kernell, Manufactured Responsiveness: The Impact of State Electoral Laws on Unified Party Control of the Presidency and House of Representatives, 1840-1940, 49 Am. J. Pol. Sci. 531, 541 (2005). Like other models that experts use in analyzing vote dilution claims, compliance with the symmetry standard is measured by extrapolating from a sample of known data, see, *e. g.,* Thornburg v. Gingles, 478 U. S. 30, 53, and n. 20 (1986) (discussing extreme case analysis and bivariate ecological regression analysis). In this litigation, the symmetry standard was not simply proposed by an *amicus* to this Court, it was also used by the expert for plaintiffs and the expert for the State in assessing the degree of partisan bias in Plans 1151C and 1374C. See App. 34-42 (report of Professor Alford); *id.,* at 189-193, 216 (report of Professor Gaddie).

Because, as noted above, Republicans would have an advantage in a significant majority of seats even if the statewide vote were equally distributed between Republicans and Democrats, Plan 1374C constitutes a significant departure from the symmetry standard. By contrast, based on Professor Gaddie's evaluation, the *Balderas* Plan, though slightly biased in favor of Republicans, provided markedly more equitable opportunities to Republicans and Democrats. For example, consistent with the

symmetry standard, under Plan 1151C the parties were likely to each take 16 congressional seats if they won 50% of the statewide vote. See App. 216.

Plan 1374C then, clearly has a discriminatory impact on the opportunities that Democratic citizens have to elect candidates of their choice. Moreover, this discriminatory effect cannot be dismissed as *de minimis*. According to the State's expert, if each party receives half the statewide vote, under Plan 1374C the Republicans would carry 62.5% (20) of the congressional seats, whereas the Democrats would win 37.5% (12) of those seats. In other words, at the vote distribution point where a politically
468 neutral map would result in zero *468 differential in the percentage of seats captured by each party, Plan 1374C is structured to create a 25% differential. When a redistricting map imposes such a significant disadvantage on a politically salient group of voters, the State should shoulder the burden of defending the map. Cf. *Brown* v. *Thomson*, 462 U. S. 835, 842-843 (1983) (holding that the implementation of a redistricting plan for state legislative districts with population deviations over 10% creates a prima facie case of discrimination under the Equal Protection Clause, thus shifting the burden to the State to defend the plan); *Larios* v. *Cox*, 300 F. Supp. 2d 1320, 1339-1340 (ND Ga.) *(per curiam)*, summarily aff'd, 542 U. S. 947 (2004) (same, but further pointing out that the "`ten percent rule'" is not a safe harbor, and concluding that, under the circumstances of the case before it, a state legislative districting plan was unconstitutional even though population deviations were under 10%). At the very least, once plaintiffs have established that the legislature's sole purpose in adopting a plan was partisan—as plaintiffs have established in this action, see Part II, *supra*—such a severe discriminatory effect should be sufficient to meet any additional burden they have to demonstrate that the redistricting map accomplishes its discriminatory purpose.[9]

469 *469 The bias in Plan 1374C is most striking with regard to its effect on the ability of Democratic voters to elect candidates of their choice, but its discriminatory effect does not end there. Plan 1374C also lessens the influence Democratic voters are likely to be able to exert over Republican lawmakers, thus further minimizing Democrats' capacity to play a meaningful role in the political process.

Even though it "defies political reality to suppose that members of a losing party have as much political influence over . . . government as do members of the victorious party," *Davis* v. *Bandemer*, 478 U. S. 109, 170 (1986) (Powell, J., concurring in part and dissenting in part), the Court has recognized that "the power to influence the political process is not limited to winning elections," *id.,* at 132 (plurality opinion); see also *Georgia* v. *Ashcroft*, 539 U. S. 461, 482 (2003). In assessing whether members of a group whose candidate is defeated at the polls can nonetheless influence the elected representative, it is "important to consider `the likelihood that candidates elected without decisive minority support would be willing to take the minority's interests into account.'" *Ibid.* (quoting *Gingles*, 478 U. S., at 100 (O'Connor, J., concurring in judgment)). One justification for majority rule is that elected officials *will* generally "take the minority's interests into account," in part because the majority recognizes that preferences shift and today's minority could be tomorrow's majority. See, *e. g.,* L. Guinier, Tyranny of the Majority 77 (1994); J. Ely, Democracy and Distrust 84 (1980); cf. Letter from James Madison to Thomas Jefferson (Oct. 24, 1787), reprinted in 1 Republic of Letters 502 (J. Smith ed. 1995) (arguing that "[t]he great desideratum in Government is . . . to modify the sovereignty as that it may be sufficiently neutral between different parts of the Society" and thus prevent a fixed
470 majority from oppressing the minority). Indeed, this Court has concluded that our *470 system of representative democracy is premised on the assumption that elected officials will seek to represent their constituency as a whole, rather than any dominant faction within that constituency. See *Shaw* v. *Reno*, 509 U. S. 630, 648 (1993).

Plan 1374C undermines this crucial assumption that congressional representatives from the majority party (in this case Republicans) will seek to represent their entire constituency. "When a district obviously is created solely to effectuate the perceived common interests of one racial group, elected officials are more likely to believe that their primary obligation is to represent only the members of that group, rather than their constituency as a whole." *Ibid. Shaw*'s analysis of representational harms in the racial gerrymandering context applies with at least as much force in the partisan gerrymandering context because, in addition to the possibility that a representative may believe her job is only to represent the interests of a dominant constituency, a representative may feel more beholden to the cartographers who drew her district than to the constituents who live there. See *Vieth*, 541 U. S., at 329-331 (STEVENS, J., dissenting). In short, Plan 1374C reduces the likelihood that Republican representatives elected from gerrymandered districts will act as vigorous advocates for the needs and interests of Democrats who reside within their districts.

In addition, Plan 1374C further weakens the incentives for members of the majority party to take the interests of the minority party into account because it locks in a Republican congressional majority of 20-22 seats, so long as Republicans achieve at least 49% of the vote. The result of this lock-in is that, according to the State's expert, between 19 and 22 of these Republican seats are safe seats, meaning seats where one party has at least a 10% advantage over the other. See App. 227-228 (expert

471 report of Professor Gaddie). Members of Congress elected from such safe districts need not worry *471 much about the possibility of shifting majorities, so they have little reason to be responsive to political minorities within their district.[10]

In sum, I think it is clear that Plan 1374C has a severe burden on the capacity of Texas Democrats to influence the political process. Far from representing an example of "one of the most significant acts a State can perform to ensure citizen
472 participation in republican self-governance," *ante,* at 416 (opinion of KENNEDY, J.), the plan guarantees that the *472 Republican-dominated membership of the Texas congressional delegation will remain constant notwithstanding significant pro-Democratic shifts in public opinion. Moreover, the harms Plan 1374C imposes on Democrats are not "hypothetical" or "counterfactual," *ante,* at 420, simply because, in the 2004 elections, Republicans won a share of seats roughly proportional to their statewide voting strength. By creating 19-22 safe Republican seats, Plan 1374C has already harmed Democrats because, as explained above, it significantly undermines the likelihood that Republican lawmakers from those districts will be responsive to the interests of their Democratic constituents. In addition, Democrats will surely have a more difficult time recruiting strong candidates, and mobilizing voters and resources, in these safe Republican districts. Thus, appellants have satisfied any requisite obligation to demonstrate that they have been harmed by the adoption of Plan 1374C.

Furthermore, as discussed in Part II, *supra,* the sole intent motivating the Texas Legislature's decision to replace Plan 1151C with Plan 1374C was to benefit Republicans and burden Democrats. Accordingly, in terms of both its intent and effect, Plan 1374C violates the sovereign's duty to govern impartially.

> "When a State adopts rules governing its election machinery or defining electoral boundaries, those rules must serve the interests of the entire community. If they serve no purpose other than to favor one segment —whether racial, ethnic, religious, economic, or political—that may occupy a position of strength at a particular point in time, or to disadvantage a politically weak segment of the community, they violate the constitutional guarantee of equal protection." *Karcher,* 462 U. S., at 748 (STEVENS, J., concurring) (citation omitted).

473 Accordingly, even accepting the Court's view that a gerrymander is tolerable unless it in fact burdens the minority's *473 representative rights, I would hold that Plan 1374C is unconstitutional.[11]

IV

Even if I thought that Plan 1374C were not unconstitutional in its entirety, I would hold that the cracking of District 24—which, under the *Balderas* Plan, was a majority-minority district that consistently elected Democratic Congressman Martin Frost—was unconstitutional. Readily manageable standards enable us to analyze both the purpose and the effect of the "granular" decisions that produced the replacements for District 24. Applying these standards, which I set forth below, I believe it is clear that the manipulation of this district for purely partisan gain violated the First and Fourteenth Amendments.

The same constitutional principles discussed above concerning the sovereign's duty to govern impartially inform the proper analysis for claims that a particular district is an unconstitutional partisan gerrymander. We have on several occasions recognized that a multimember district is subject to challenge under the Fourteenth Amendment if it operates "`to minimize or
474 cancel out the voting strength of racial *or* *474 *political* elements of the voting population.'" *E. g., Gaffney* v. *Cummings,* 412 U. S. 735, 751 (1973) (emphasis added); *Burns* v. *Richardson,* 384 U. S. 73, 88 (1966). There is no constitutionally relevant distinction between the harms inflicted by single-member district gerrymanders that minimize or cancel out the voting strength of a political element of the population and the same harms inflicted by multimember districts. In both situations, the State has interfered with the voter's constitutional right to "engage in association for the advancement of beliefs and ideas," *NAACP* v. *Alabama ex rel. Patterson,* 357 U. S. 449, 460 (1958).

I recognize that legislatures will always be aware of politics and that we must tolerate some consideration of political goals in the redistricting process. See *Cousins* v. *City Council of Chicago,* 466 F. 2d 830, 847 (CA7 1972) (Stevens, J., dissenting). However, I think it is equally clear that, when a plaintiff can prove that a legislature's predominant motive in drawing a particular district was to disadvantage a politically salient group, and that the decision has the intended effect, the plaintiff's constitutional rights have been violated. See *id.,* at 859-860. Indeed, in *Vieth,* five Members of this Court explicitly recognized that extreme partisan gerrymandering violates the Constitution. See 541 U. S., at 307, 312-316 (KENNEDY, J., concurring in judgment); *id.,* at 317-318 (STEVENS, J., dissenting); *id.,* at 343, 347-352 (SOUTER, J., joined by GINSBURG, J., dissenting); *id.,* at 356-357, 366-367 (BREYER, J., dissenting). The other four Justices in *Vieth* stated that they did not disagree with that conclusion. See *id.,* at 292 (plurality opinion). The *Vieth* plurality nonetheless determined that there were no judicially manageable standards to assess partisan gerrymandering claims. *Id.,* at 305-306. However, the following test, which shares some features of the burden-

shifting standard for assessing unconstitutional partisan gerrymandering proposed by Justice SOUTER's opinion in *Vieth*, see
475 *id.*, at 348-351, would provide a remedy for at least the most blatant *475 unconstitutional partisan gerrymanders and would also be eminently manageable.

First, to have standing to challenge a district as an unconstitutional partisan gerrymander, a plaintiff would have to prove that he is either a candidate or a voter who resided in a district that was changed by a new districting plan. See *id.*, at 327-328 (STEVENS, J., dissenting) (discussing *United States* v. *Hays*, 515 U. S. 737 (1995)). See also 541 U. S., at 347-348 (SOUTER, J., joined by GINSBURG, J., dissenting) (citing *Hays*). A plaintiff with standing would then be required to prove both improper purpose and effect.

With respect to the "purpose" portion of the inquiry, I would apply the standard fashioned by the Court in its racial gerrymandering cases. Under the Court's racial gerrymandering jurisprudence, judges must analyze whether plaintiffs have proved that race was the predominant factor motivating a districting decision such that other, race-neutral districting principles were subordinated to racial considerations. If so, strict scrutiny applies, see, *e. g.*, *Vera*, 517 U. S., at 958-959 (plurality opinion), and the State must justify its districting decision by establishing that it was narrowly tailored to serve a compelling state interest, such as compliance with § 2 of the Voting Rights Act, see *King* v. *Illinois Bd. of Elections*, 979 F. Supp. 619 (ND Ill. 1997), summarily aff'd, 522 U. S. 1087 (1998); *Vera*, 517 U. S., at 994 (O'Connor, J., concurring).[12] However, strict scrutiny does not apply merely because race was one motivating factor behind the drawing of a majority-minority district. *Id.*, at 958-959 (plurality opinion); see also *Easley* v. *Cromartie*, 532 U. S. 234, 241 (2001). Applying these standards to the political
476 gerrymandering context, I would hold that, if a plaintiff carried *476 her burden of demonstrating that redistricters subordinated neutral districting principles to political considerations and that their predominant motive was to maximize one party's power, she would satisfy the intent prong of the constitutional inquiry.[13] Cf. *Vieth*, 541 U. S., at 349-350 (SOUTER, J., joined by GINSBURG, J., dissenting) (discussing the importance of a district's departures from traditional districting principles in determining whether the district is an unconstitutional gerrymander).

With respect to the effects inquiry, a plaintiff would be required to demonstrate the following three facts: (1) her candidate of choice won election under the old plan; (2) her residence is now in a district that is a safe seat for the opposite party; and (3) her new district is less compact than the old district. The first two prongs of this effects inquiry would be designed to measure whether or not the plaintiff has been harmed, whereas the third prong would be relevant because the shape of the gerrymander has always provided crucial evidence of its character, see *Karcher*, 462 U. S., at 754-758, 762-763 (STEVENS, J., concurring); see also *Vieth*, 541 U. S., at 348 (SOUTER, J., joined by GINSBURG, J., dissenting) (noting that compactness is a traditional districting principle, which "can be measured quantitatively"). Moreover, a safe harbor for more compact districts would allow a newly elected majority to eliminate a prior partisan gerrymander without fear of liability or even the need to devote resources to litigating whether or not the legislature had acted with an impermissible intent.

477 *477 If a plaintiff with standing could meet the intent and effects prong of the test outlined above, that plaintiff would clearly have demonstrated a violation of her constitutional rights. Moreover, I do not think there can be any colorable claim that this test would not be judicially manageable.

Applying this test to the facts of these cases, I think plaintiffs in new Districts 6, 24, 26, and 32—four of the districts in Plan 1374C that replaced parts of *Balderas* District 24—can demonstrate that their constitutional rights were violated by the cracking of *Balderas* District 24. First, I assume that there are plaintiffs who reside in Districts 6, 24, 26, and 32, and whose homes were previously located in *Balderas* District 24.[14] Accordingly, I assume that there are plaintiffs who have standing to challenge the creation of these districts.

Second, plaintiffs could easily satisfy their burden of proving predominant partisan purpose. Indeed, in this litigation, the State has acknowledged that its predominant motivation for cracking District 24 was to achieve partisan gain. See State Post-Trial Brief 51-52 (noting that, in spite of concerns that the cracking of District 24 could lead to Voting Rights Act liability, "[t]he Legislature . . . chose to pursue a political goal of unseating Congressman Frost instead of following a course that might have lowered risks [of such liability]").

The District Court agreed with the State's analysis on this issue. In the District Court, plaintiffs claimed that the creation of District 26 violated the Equal Protection Clause because the decision to create District 26 was motivated by unconstitutional
478 racial discrimination against black voters. *478 The District Court rejected this argument, concluding that the State's decision to crack *Balderas* District 24 was driven not by racial prejudice, but rather by the political desire to maximize Republican advantage and to "remove Congressman Frost," which required that Frost "lose a large portion of his Democratic constituency, many of whom lived in a predominately Black area of Tarrant County." *Session*, 298 F. Supp. 2d, at 471.

That an impermissible, predominantly partisan, purpose motivated the cracking of former District 24 is further demonstrated by the fact that, in my judgment, this cracking caused Plan 1374C to violate § 5 of the Voting Rights Act, 42 U. S. C. § 1973c. The State's willingness to adopt a plan that violated its legal obligations under the Voting Rights Act, combined with the other indicia of partisan intent in this litigation, is compelling evidence that politics was not simply one factor in the cracking of District 24, but rather that it was an impermissible, predominant factor.

Section 5 of the Voting Rights Act "was intended `to insure that [the gains thus far achieved in minority political participation] shall not be destroyed through new [discriminatory] procedures and techniques.'" *Beer* v. *United States*, 425 U. S. 130, 140-141 (1976) (quoting S. Rep. No. 94-295, p. 19 (1975); alteration in *Beer*). To effectuate this goal, § 5 prevents covered jurisdictions, such as Texas, from making changes to their voting procedures "that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Georgia*, 539 U. S., at 477 (internal quotation marks omitted). In other words, during the redistricting process, covered jurisdictions may not "leave minority voters with less chance to be effective in electing preferred candidates than they were" under the prior districting plan. See *id.,* at 494 (SOUTER, J.,
479 dissenting). By cracking *Balderas* District 24, and by not offsetting the loss in black voters' ability to elect preferred *479 candidates elsewhere, Plan 1374C resulted in impermissible retrogression.

Under the *Balderas* Plan, black Americans constituted a majority of Democratic primary voters in District 24. According to the unanimous report authored by staff attorneys in the Voting Section of the Department of Justice, black voters in District 24 generally voted cohesively, and thus had the ability to elect their candidate of choice in the Democratic primary. Section 5 Recommendation Memorandum 33 (Dec. 12, 2003), available at http://www.washingtonpost.com/wp-srv/nation/documents/texasDOJmemo.pdf (as visited June 21, 2006, and available in Clerk of Court's case file). Moreover, the black community's candidates of choice could consistently attract sufficient crossover voting from nonblacks to win the general election, even though blacks did not constitute a majority of voters in the general election. *Id.,* at 33-34. Representative Frost, who is white, was clearly the candidate of choice of the black community in District 24, based on election returns, testimony of community leaders, and "`scorecards'" he received from groups dedicated to advancing the interests of African-Americans. See *id.,* at 35.

As noted above, in Plan 1374C, "the minority community in [*Balderas* District] 24 [was] splintered and submerged into majority Anglo districts in the Dallas-Fort Worth area." *Id.,* at 67. By dismantling one district where blacks had the ability to elect
480 candidates of their choice,[15] and by not offsetting *480 this loss of a district with another district where black voters had a similar opportunity, Plan 1374C was retrogressive, in violation of § 5 of the Voting Rights Act. See *id.,* at 31, 67-69.

Notwithstanding the unanimous opinion of the staff attorneys in the Voting Section of the Justice Department that Plan 1374C was retrogressive and that the Attorney General should have interposed an objection, the Attorney General elected to preclear the map, thus allowing it to take effect. We have held that, under the statutory scheme, voters may not directly challenge the Attorney General's decision to preclear a redistricting plan, see *Morris* v. *Gressette*, 432 U. S. 491 (1977), which means that the Attorney General's vigilant enforcement of the Act is critical, and which also means that plaintiffs could not bring a § 5 challenge as part of this litigation.[16] However, judges are frequently called upon to consider whether a redistricting plan violates § 5, because a covered jurisdiction has the option of seeking to achieve preclearance by either submitting its plan to the Attorney
481 General or filing a declaratory judgment action in the District Court for the District of Columbia, whose judgment is *481 subject to review by this Court, see, *e. g., Georgia*, 539 U. S. 461. Accordingly, we have the tools to analyze whether a redistricting plan is retrogressive.

Even though the § 5 issue is not directly before this Court, for the reasons stated above, I believe that the cracking of District 24 caused Plan 1374C to be retrogressive. And the fact that the legislature promulgated a retrogressive plan is relevant because it provides additional evidence that the legislature acted with a predominantly partisan purpose. Complying with § 5 is a neutral districting principle, and the legislature's promulgation of a retrogressive redistricting plan buttresses my conclusion that the "legislature subordinated traditional [politically] neutral districting principles. . . to [political] considerations." *Miller* v. *Johnson*, 515 U. S. 900, 916 (1995). This evidence is particularly compelling in light of the State's acknowledgment that "[t]he Legislature. . . chose to pursue a political goal of unseating Congressman Frost instead of following a course that might have lowered risks in the preclearance process." State Post-Trial Brief 52 (citing, *inter alia,* trial testimony of state legislators).

In sum, the record in this litigation makes clear that the predominant motive underlying the fragmentation of *Balderas* District 24 was to maximize Republicans' electoral opportunities and ensure that Congressman Frost was defeated.

Turning now to the effects test I have proposed, plaintiffs in new Districts 6, 24, 26, and 32 could easily meet the three parts of that test because: (1) under the *Balderas* Plan, they lived in District 24 and their candidate of choice (Frost) was the winning

candidate; (2) under Plan 1374C, they have been placed in districts that are safe seats for the Republican party, see App. 106 (showing that the Democratic share of the two-party vote in statewide elections from 1996 to 2002 was 40% or less in Districts
482 6, 24, 26, and 32); and (3) their *482 new districts are less compact than *Balderas* District 24, see App. 319-320 (compactness scores for districts under the *Balderas* Plan and Plan 1374C).[17]

JUSTICE KENNEDY rejects my proposed effects test, as applied in these cases, because in his view *Balderas* District 24 lacks "any special claim to fairness," *ante,* at 446. But my analysis in no way depends on the proposition that *Balderas* District 24 was fair. The district *was* more compact than four of the districts that replaced it, and, as explained above, compactness serves important values in the districting process. This is why, in my view, a State that creates more compact districts should enjoy a safe harbor from partisan gerrymandering claims. However, the mere fact that a prior district was unfair should surely not provide a safe harbor for the creation of an even more unfair district. Conversely, a State may of course create less compact districts without violating the Constitution so long as its purpose is not to disadvantage a politically disfavored group. See *supra,* at 477-478, and n. 14. The reason I focus on *Balderas* District 24 is not because the district was fair, but because the prior district provides a clear benchmark in analyzing whether plaintiffs have been harmed.

In sum, applying the judicially manageable test set forth in this Part of my opinion reveals that the cracking of *Balderas* District 24 created several unconstitutional partisan gerrymanders. Even if I believed that Plan 1374C were not invalid in its entirety, I would reverse the judgment below with regard to Districts 6, 24, 26, and 32.

* * *

483 *483 For the foregoing reasons, although I concur with the majority's decision to invalidate District 23 under § 2 of the Voting Rights Act, I respectfully dissent from the Court's decision to affirm the judgment below with respect to plaintiffs' partisan gerrymandering claim. I would reverse with respect to the plan as a whole, and also, more specifically, with respect to Districts 6, 24, 26, and 32.

JUSTICE SOUTER, with whom JUSTICE GINSBURG joins, concurring in part and dissenting in part.

I join Part II-D of the principal opinion, rejecting the one-person, one-vote challenge to Plan 1374C based simply on its mid-decade timing, and I also join Part II-A, in which the Court preserves the principle that partisan gerrymandering can be recognized as a violation of equal protection, see *Vieth* v. *Jubelirer,* 541 U. S. 267, 306 (2004) (KENNEDY, J., concurring in judgment); *id.,* at 317 (STEVENS, J., dissenting); *id.,* at 346 (SOUTER, J., dissenting); *id.,* at 355 (BREYER, J., dissenting). I see nothing to be gained by working through these cases on the standard I would have applied in *Vieth, supra,* at 346-355 (dissenting opinion), because here as in *Vieth* we have no majority for any single criterion of impermissible gerrymander (and none for a conclusion that Plan 1374C is unconstitutional across the board). I therefore treat the broad issue of gerrymander much as the subject of an improvident grant of certiorari, and add only two thoughts for the future: that I do not share JUSTICE KENNEDY's seemingly flat rejection of any test of gerrymander turning on the process followed in redistricting, see *ante,* at 416-420 (principal opinion), nor do I rule out the utility of a criterion of symmetry as a test, see, *e. g.,* King & Browning, Democratic Representation and Partisan Bias in Congressional Elections, 81 Am. Pol. Sci. Rev. 1251 (1987). Interest in
484 exploring this notion is evident, see *ante,* at 419-420 *484 (principal opinion); *ante,* at 465-468 (STEVENS, J., concurring in part and dissenting in part); *post,* at 491-492 (BREYER, J., concurring in part and dissenting in part). Perhaps further attention could be devoted to the administrability of such a criterion at all levels of redistricting and its review.

I join Part III of the principal opinion, in which the Court holds that Plan 1374C's District 23 violates § 2 of the Voting Rights Act of 1965, 42 U. S. C. § 1973, in diluting minority voting strength. But I respectfully dissent from Part IV, in which a plurality upholds the District Court's rejection of the claim that Plan 1374C violated § 2 in cracking the black population in the prior District 24 and submerging its fragments in new Districts 6, 12, 24, 26, and 32. On the contrary, I would vacate the judgment and remand for further consideration.

The District Court made a threshold determination resting reasonably on precedent of this Court and on a clear rule laid down by the Fifth Circuit, see *Valdespino* v. *Alamo Heights Independent School Dist.,* 168 F. 3d 848, 852-853 (1999), cert. denied, 528 U. S. 1114 (2000): the first condition for making out a § 2 violation, as set out in *Thornburg* v. *Gingles,* 478 U. S. 30 (1986), requires "the minority group . . . to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district," *id.,* at 50, (here, the old District 24) before a dilution claim can be recognized under § 2.[1] Although both the plurality today and our own prior cases have sidestepped the question whether a statutory dilution claim can prevail without the possibility of a district percentage of minority voters above 50%, see *ante,* at 443; *Johnson* v. *De Grandy,* 512 U. S.

485 *485 997, 1008-1009 (1994); *Voinovich* v. *Quilter*, 507 U. S. 146, 154 (1993); *Growe* v. *Emison*, 507 U. S. 25, 41, n. 5 (1993); *Gingles, supra*, at 46, n. 12, the day has come to answer it.

Chief among the reasons that the time has come is the holding in *Georgia* v. *Ashcroft*, 539 U. S. 461 (2003), that replacement of a majority-minority district by a coalition district with minority voters making up fewer than half can survive the prohibition of retrogression under § 5 of the Voting Rights Act, 42 U. S. C. § 1973c, enforced through the preclearance requirement, *Georgia*, 539 U. S., at 482-483. At least under § 5, a coalition district can take on the significance previously accorded to one with a majority-minority voting population. Thus, despite the independence of §§ 2 and 5, *id.,* at 477-479, there is reason to think that the integrity of the minority voting population in a coalition district should be protected much as a majority-minority bloc would be. While protection should begin through the preclearance process,[2] in jurisdictions where that is required, if that process fails a minority voter has no remedy under § 5 because the State and the Attorney General (or the District Court for the District of Columbia) are the only participants in preclearance, see 42 U. S. C. § 1973c. And, of course, vast areas of the country are not covered by § 5. Unless a minority voter is to be left with no recourse whatsoever, then, relief under § 2 must be possible, as by definition it would not be if a numerical majority of minority voters in a reconstituted or putative district is a necessary condition. I would therefore hold that a minority of 50% or less of the voting population might suffice at the *Gingles* gatekeeping stage. To have a clear-edged rule, I would hold it sufficient satisfaction of the first gatekeeping condition to show that minority voters in a
486 reconstituted or putative district constitute a majority *486 of those voting in the primary of the dominant party, that is, the party tending to win in the general election.[3]

This rule makes sense in light of the explanation we gave in *Gingles* for the first condition for entertaining a claim for breach of the § 2 guarantee of racially equal opportunity "to elect representatives of . . . choice," 42 U. S. C. § 1973: "The reason that a minority group making such a challenge must show, as a threshold matter, that it is sufficiently large . . . is this: Unless minority voters possess the potential to elect representatives in the absence of the challenged structure or practice, they cannot claim to have been injured by that structure or practice." 478 U. S., at 50, n. 17 (emphasis deleted); see also *id.,* at 90, n. 1 (O'Connor, J., concurring in judgment) ("[I]f a minority group that is not large enough to constitute a voting majority in a single-member district can show that white support would probably be forthcoming in some such district to an extent that would enable the election of the candidates its members prefer, that minority group would appear to have demonstrated that, at least under this measure of its voting strength, it would be able to elect some candidates of its choice"). Hence, we emphasized that an analysis under § 2 of the political process should be "`functional.'" *Id.,* at 48, n. 15 (majority opinion); see also *Voinovich, supra*, at 158 ("[T]he *Gingles* factors cannot be applied mechanically and without regard to the nature of the claim"). So it is not surprising that we have looked to political-primary data in considering the second and third *Gingles* conditions, to see whether
487 there is racial bloc voting. *487 See, *e. g.,* *Abrams* v. *Johnson*, 521 U. S. 74, 91-92 (1997); *Gingles, supra*, at 52-54, 59-60.

The pertinence of minority voters' role in a primary is obvious: a dominant party's primary can determine the representative ultimately elected, as we recognized years ago in evaluating the constitutional importance of primary elections. See *United States* v. *Classic*, 313 U. S. 299, 318-319 (1941) ("Where the state law has made the primary an integral part of the procedure of choice, or where in fact the primary effectively controls the choice, the right of the elector to have his ballot counted at the primary is likewise included in the right protected by Article I, § 2. . . . Here, . . . the right to choose a representative is in fact controlled by the primary because, as is alleged in the indictment, the choice of candidates at the Democratic primary determines the choice of the elected representative"); *id.,* at 320 ("[A] primary election which involves a necessary step in the choice of candidates for election as representatives in Congress, and which in the circumstances of this case controls that choice, is an election within the meaning of the constitutional provision"); *Smith* v. *Allwright*, 321 U. S. 649, 660 (1944) (noting "[t]he fusing by the *Classic* case of the primary and general elections into a single instrumentality for choice of officers"); *id.,* at 661-662 ("It may now be taken as a postulate that the right to vote in such a primary for the nomination of candidates without discrimination by the State, like the right to vote in a general election, is a right secured by the Constitution. . . . Under our Constitution the great privilege of the ballot may not be denied a man by the State because of his color").[4] These conclusions
488 of our predecessors *488 fit with recent scholarship showing that electoral success by minorities is adequately predictable by taking account of primaries as well as elections, among other things. See Grofman, Handley, & Lublin, Drawing Effective Minority Districts: A Conceptual Framework and Some Empirical Evidence, 79 N. C. L. Rev. 1383 (2000-2001).[5]

I would accordingly not reject this § 2 claim at step one of *Gingles,* nor on this record would I dismiss it by jumping to the ultimate § 2 issue to be decided on a totality of the circumstances, see *De Grandy*, 512 U. S., at 1009-1022, and determine that the black plaintiffs cannot show that submerging them in the five new districts violated their right to equal opportunity to participate in the political process and elect candidates of their choice. The plurality, on the contrary, is willing to accept the conclusion that the minority voters lost nothing cognizable under § 2 because they could not show the degree of control that guaranteed a candidate of their choice in the old District 24. See *ante,* at 443-446. The plurality accepts this conclusion by

placing great weight on the fact that Martin Frost, the perennially successful congressional candidate in District 24, was white. See, *e. g., ante,* at 444-445 (no clear error in District Court's findings that "no Black candidate has ever filed in a Democratic primary against Frost," Session v. Perry, 298 F. Supp. 2d 451, 484 (ED Tex. 2004) *(per curiam)*, and "[w]e have no measure of what Anglo turnout would be in a Democratic primary if Frost were opposed by a Black candidate," *ibid.*); *ante,* at 445 (no clear
489 error in District Court's reliance on testimony of Congresswoman Eddie Bernice Johnson that "District 24 *489 was drawn for an Anglo Democrat (Martin Frost, in particular) in 1991").

There are at least two responses. First, "[u]nder § 2, it is the status of the candidate as the chosen representative of a particular racial group, not the race of the candidate, that is important." *Gingles, supra,* at 68 (emphasis deleted). Second, Frost was convincingly shown to have been the "chosen representative" of black voters in old District 24. In the absence of a black-white primary contest, the unchallenged evidence is that black voters dominated a primary that consistently nominated the same and ultimately successful candidate; it takes more than speculation to rebut the demonstration that Frost was the candidate of choice of the black voters.[6] There is no indication that party rules or any other device rigged the primary ballot so as to bar any aspirants the minority voters would have preferred, see n. 5, *supra,* and the uncontroverted and overwhelming evidence is that Frost was strongly supported by minority voters after more than two decades of sedulously considering minority interests, App. 107 (Frost's rating of 94% on his voting record from the National Association for the Advancement of Colored People exceeded the scores of all other members of the Texas congressional delegation, including black and Hispanic members of both major parties); *id.,* at 218-219 (testimony by State's political-science expert that Frost is the African-Americans' candidate of choice); *id.,* at 239 (testimony by Ron Kirk, an African-American former mayor of Dallas and U. S. Senate candidate, that Frost "has gained a very strong base of support among African-American . . . voters because of his strong voting records [in numerous areas]" and has "an incredible following and amount of respect among the African-American community"); *id.,* at 240-241
490 (Kirk's testimony *490 that Frost has never had a contested primary because he is beloved by the African-American community, and that a black candidate, possibly including himself, could not better Frost in a primary because of his strong rapport with the black community); *id.,* at 242-243 (testimony by county precinct administrator that Frost has been the favored candidate of the African-American community and there have been no primary challenges to him because he "serves [African-American] interests").[7]

It is not that I would or could decide at this point whether the elimination of the prior district and composition of the new one violates § 2. The other *Gingles* gatekeeping rules have to be considered, with particular attention to the third, majority bloc voting, see 478 U. S., at 51, since a claim to a coalition district is involved.[8] And after that would come the ultimate analysis of the totality of circumstances. See *De Grandy, supra,* at 1009-1022.

491 I would go no further here than to hold that the enquiry should not be truncated by or conducted in light of the Fifth *491 Circuit's 50% rule,[9] or by the candidate-of-choice analysis just rejected. I would return the § 2 claim on old District 24 to the District Court, which has already labored so mightily on these cases. All the members of the three-judge court would be free to look again untethered by the 50% barrier, and Judge Ward, in particular, would have the opportunity to develop his reasons unconstrained by the Circuit's 50% rule, which he rightly took to limit his consideration of the claim, see *Session,* 298 F. Supp. 2d, at 528-531 (opinion concurring in part and dissenting in part).

JUSTICE BREYER, concurring in part and dissenting in part.

I join Parts II-A and III of the Court's opinion. I also join Parts I and II of JUSTICE STEVENS' opinion concurring in part and dissenting in part.

For one thing, the timing of the redistricting (between census periods), the radical departure from traditional boundary-drawing criteria, and the other evidence to which JUSTICE STEVENS refers in Parts I and II of his opinion make clear that a "desire to maximize partisan advantage" was the "sole purpose behind the decision to promulgate Plan 1374C." *Ante,* at 458. Compare, *e. g.,* App. 176-178; *ante,* at 452-455, 458-459 (opinion of STEVENS, J.), with *Vieth* v. *Jubelirer,* 541 U. S. 267, 366-367 (2004) (BREYER, J., dissenting).

492 For another thing, the evidence to which JUSTICE STEVENS refers in Part III of his opinion demonstrates that the *492 plan's effort "to maximize partisan advantage," *ante,* at 458, encompasses an effort not only to exaggerate the favored party's electoral majority but also to produce a majority of congressional representatives even if the favored party receives only a *minority* of popular votes. Compare *ante,* at 465-468 (opinion of STEVENS, J.), App. 55 (plaintiffs' expert), and *id.,* at 216 (State's expert), with *Vieth, supra,* at 360 (BREYER, J., dissenting).

Finally, because the plan entrenches the Republican Party, the State cannot successfully defend it as an effort simply to *neutralize* the Democratic Party's previous political gerrymander. Nor has the State tried to justify the plan on nonpartisan grounds, either as an effort to achieve legislative stability by avoiding legislative exaggeration of small shifts in party preferences, see *Vieth*, 541 U.S., at 359 (same), or in any other way.

In sum, "the risk of entrenchment is demonstrated," "partisan considerations [have] render[ed] the traditional district-drawing compromises irrelevant," and "no justification other than party advantage can be found." *Id.,* at 367 (same). The record reveals a plan that overwhelmingly relies upon the unjustified use of purely partisan line-drawing considerations and which will likely have seriously harmful electoral consequences. *Ibid.* For these reasons, I believe the plan in its entirety violates the Equal Protection Clause.

CHIEF JUSTICE ROBERTS, with whom JUSTICE ALITO joins, concurring in part, concurring in the judgment in part, and dissenting in part.

I join Parts I and IV of the plurality opinion. With regard to Part II, I agree with the determination that appellants have not provided "a reliable standard for identifying unconstitutional political gerrymanders." *Ante,* at 423. The question whether any such standard exists—that is, whether a challenge to a political gerrymander presents a justiciable case or controversy—has
493 not been argued in these cases. I therefore take no position on that question, which *493 has divided the Court, see *Vieth* v. *Jubelirer*, 541 U. S. 267 (2004), and I join the Court's disposition in Part II without specifying whether appellants have failed to state a claim on which relief can be granted, or have failed to present a justiciable controversy.

I must, however, dissent from Part III of the Court's opinion. According to the District Court's factual findings, the State's drawing of district lines in south and west Texas caused the area to move from five out of seven effective Latino opportunity congressional districts, with an additional district "moving" in that direction, to *six* out of seven effective Latino opportunity districts. See *Session* v. *Perry*, 298 F. Supp. 2d 451, 489, 503-504 (ED Tex. 2004) *(per curiam)*. The end result is that while Latinos make up 58% of the citizen voting-age population in the area, they control 85% (six of seven) of the districts under the State's plan.

In the face of these findings, the majority nonetheless concludes that the State's plan somehow dilutes the voting strength of Latinos in violation of § 2 of the Voting Rights Act of 1965. The majority reaches its surprising result because it finds that Latino voters in one of the State's Latino opportunity districts—District 25—are insufficiently compact, in that they consist of two different groups, one from around the Rio Grande and another from around Austin. According to the majority, this may make it more difficult for certain Latino-preferred candidates to be elected from that district—*even though Latino voters make up 55% of the citizen voting-age population in the district and vote as a bloc. Id.,* at 492, n. 126, 503. The majority prefers old District 23, despite the District Court determination that new District 25 is "a more effective Latino opportunity district than Congressional District 23 had been." *Id.,* at 503; see *id.,* at 489, 498-499. The District Court based that determination on a careful examination of regression analysis showing that "the Hispanic-preferred candidate [would win] *every* primary and general election examined
494 in District 25," *id.,* at 503 (emphasis added), compared to the only partial success *494 such candidates enjoyed in former District 23, *id.,* at 488, 489, 496.

The majority dismisses the District Court's careful factfinding on the ground that the experienced judges did not properly consider whether District 25 was "compact" for purposes of § 2. *Ante,* at 430-431. But the District Court opinion itself clearly demonstrates that the court carefully considered the compactness of the minority group in District 25, just as the majority says it should have. The District Court recognized the very features of District 25 highlighted by the majority and unambiguously concluded, under the totality of the circumstances, that the district was an effective Latino opportunity district, and that no violation of § 2 in the area had been shown.

Unable to escape the District Court's factfinding, the majority is left in the awkward position of maintaining that its *theory* about compactness is more important under § 2 than the actual prospects of electoral success for Latino-preferred candidates under a State's apportionment plan. And that theory is a novel one to boot. Never before has this or any other court struck down a State's redistricting plan under § 2, on the ground that the plan achieves the maximum number of possible majority-minority districts, but loses on style points, in that the minority voters in one of those districts are not as "compact" as the minority voters would be in another district were the lines drawn differently. Such a basis for liability pushes voting rights litigation into a whole new area—an area far removed from the concern of the Voting Rights Act to ensure minority voters an equal opportunity "to elect representatives of their choice." 42 U. S. C. § 1973(b).

I

Under § 2, a plaintiff alleging "a denial or abridgement of the right of [a] citizen of the United States to vote on account of race or color," § 1973(a), must show, "based on the totality of circumstances,"

495 *495 "that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) . . . in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." § 1973(b).

In *Thornburg* v. *Gingles*, 478 U. S. 30 (1986), we found that a plaintiff challenging the State's use of multimember districts could meet this standard by showing that replacement of the multimember district with several single-member districts would likely provide minority voters in at least some of those single-member districts "the ability . . . to elect representatives of their choice." *Id.,* at 48. The basis for this requirement was simple: If no districts were possible in which minority voters had prospects of electoral success, then the use of multimember districts could hardly be said to thwart minority voting power under § 2. See *ibid.* ("Minority voters who contend that the multimember form of districting violates § 2 must prove that the use of a multimember electoral structure operates to minimize or cancel out their ability to elect their preferred candidates").

The next generation of voting rights litigation confirmed that "manipulation of [single-member] district lines" could also dilute minority voting power if it packed minority voters in a few districts when they might control more, or dispersed them among districts when they might control some. *Voinovich* v. *Quilter*, 507 U. S. 146, 153-154 (1993). Again the basis for this application of *Gingles* was clear: A configuration of district lines could only dilute minority voting strength if under another configuration minority voters had better electoral prospects. Thus in cases involving single-member districts, the question was whether an *additional* majority-minority district should be created, see *Abrams* v. *Johnson*, 521 U. S. 74, 91-92 (1997); *Growe* v. *Emison*,
496 507 U. S. 25, 38 (1993), or whether *additional* influence districts *496 should be created to supplement existing majority-minority districts, see *Voinovich, supra*, at 154.

We have thus emphasized, since *Gingles* itself, that a § 2 plaintiff must at least show an apportionment that is likely to perform *better* for minority voters, compared to the existing one. See 478 U. S., at 99 (O'Connor, J., concurring in judgment) ("[T]he relative lack of minority electoral success under a challenged plan, when compared with the success that would be predicted under the measure of undiluted minority voting strength the court is employing, can constitute powerful evidence of vote dilution"). And unsurprisingly, in the context of single-member districting schemes, we have invariably understood this to require the possibility of *additional* single-member districts that minority voters might control.

Johnson v. *De Grandy*, 512 U. S. 997 (1994), reaffirmed this understanding. The plaintiffs in *De Grandy* claimed that, by reducing the size of the Hispanic majority in some districts, *additional* Hispanic-majority districts could be created. *Id.,* at 1008. The State defended a plan that did not do so on the ground that the proposed additional districts, while containing nominal Hispanic majorities, would "lack enough Hispanic voters to elect candidates of their choice without cross-over votes from other ethnic groups," and thus could not bolster Hispanic voting strength under § 2. *Ibid.*

In keeping with the requirement that a § 2 plaintiff must show that an alternative apportionment would present *better* prospects for minority-preferred candidates, the Court set out the condition that a challenge to an existing set of single-member districts must show the possibility of "creating more than the existing number of reasonably compact districts with a sufficiently large minority population to elect candidates of its choice." *Ibid. De Grandy* confirmed that simply proposing a set of districts that
497 divides up a minority population in a different manner than the State has chosen, *497 without a gain in minority opportunity districts, does not show vote dilution, but "only that lines could have been drawn elsewhere." *Id.,* at 1015.

Here the District Court found that six Latino-majority districts were all that south and west Texas could support. Plan 1374C provides six such districts, just as its predecessor did. This fact, combined with our precedent making clear that § 2 plaintiffs must show an alternative with *better* prospects for minority success, should have resulted in affirmance of the District Court decision on vote dilution in south and west Texas. See *Gingles, supra*, at 79 ("[T]he clearly-erroneous test of [Federal Rule of Civil Procedure] 52(a) is the appropriate standard for appellate review of a finding of vote dilution. . . . [W]hether the political process is equally open to minority voters . . . is peculiarly dependent upon the facts" (internal quotation marks omitted)); *Rogers* v. *Lodge*, 458 U. S. 613, 622, 627 (1982).

The majority avoids this result by finding fault with the District Court's analysis of one of the Latino-majority districts in the State's plan. That district—District 25—is like other districts in the State's plan, like districts in the predecessor plan, and like

districts in the *plaintiffs'* proposed seven-district plan, in that it joins population concentrations around the border area with others closer to the center of the State. The District Court explained that such "`bacon-strip'" districts are inevitable, given the geography and demography of that area of the State. Session, 298 F. Supp. 2d, at 486-487, 490, 491, n. 125, 502.

The majority, however, criticizes the District Court because its consideration of the compactness of District 25 under § 2 was deficient. According to the majority,

> "the court analyzed the issue only for equal protection purposes. In the equal protection context, compactness focuses on the contours of district lines to determine whether race was the predominant factor in drawing *498 those lines. Under § 2, by contrast, the injury is vote dilution, so the compactness inquiry embraces different considerations." *Ante,* at 433 (citation omitted).

This is simply an inaccurate description of the District Court's opinion. The District Court expressly considered compactness in the § 2 context. That is clear enough from the fact that the majority *quotes* the District Court's opinion in elaborating on the standard of compactness it believes the District Court *should* have applied. See *ante,* at 424 (quoting Session, supra, at 502); *ante,* at 434 (quoting Session, supra, at 502). The very passage quoted by the majority about the different "`needs and interests'" of the communities in District 25, *ante,* at 424, appeared in the District Court opinion precisely because the District Court recognized that those concerns "bear on the extent to which the new districts"—including District 25—"are functionally effective Latino opportunity districts, important to understanding whether *dilution* results from Plan 1374C," Session, 298 F. Supp. 2d, at 502 (emphasis added); see also *ibid.* (noting different "needs and interests of Latino communities" in the "`bacon-strip'" districts and concluding that "[t]he issue is whether these features mean that the newly-configured districts *dilute the voting strength* of Latinos" (emphasis added)).

Indeed, the District Court addressed compactness in two different sections of its opinion: in Part VI-C with respect to vote dilution under § 2, and in Part VI-D with respect to whether race predominated in drawing district lines, for purposes of equal protection analysis. The District Court even explained, in considering in Part VI-C the differences between the Latino communities in the bacon-strip districts (including District 25) for purposes of vote dilution under § 2, how the same concerns bear on the plaintiffs' equal protection claim, discussed in Part VI-D. *Id.,* at 502, n. 168. The majority faults the District Court for discussing "the relative smoothness of the district lines," because that is only pertinent *499 in the equal protection context, *ante,* at 432, but it was only in the equal protection context that the District Court mentioned the relative smoothness of district lines. See 298 F. Supp. 2d, at 506-508. In discussing compactness in Part VI-C, with respect to vote dilution under § 2, the District Court considered precisely what the majority says it should have: the diverse needs and interests of the different Latino communities in the district. Unlike the majority, however, the District Court properly recognized that the question under § 2 was "whether these features mean that the newly-configured districts dilute the voting strength of Latinos." *Id.,* at 502.

The District Court's answer to that question was unambiguous:

> "Witnesses testified that Congressional Districts 15 and 25 would span *colonias* in Hidalgo County and suburban areas in Central Texas, but the witnesses testified, and the regression data show, that both districts are effective Latino opportunity districts, with the Hispanic-preferred candidate winning every primary and general election examined in District 25." *Id.,* at 503.

The District Court emphasized this point again later on:

> "The newly-configured Districts 15, 25, 27, and 28 cover more territory and travel farther north than did the corresponding districts in Plan 1151C. The districts combine more voters from the central part of the State with voters from the border cities than was the case in Plan 1151C. The population data, regression analyses, and the testimony of both expert witnesses and witnesses knowledgeable about how politics actually works in the area lead to the finding that in Congressional Districts 25 and 28, Latino voters will likely control every primary and general election outcome." *Id.,* at 503-504.

I find it inexplicable how the majority can read these passages and state that the District Court reached its finding *500 on the effectiveness of District 25 "without accounting for the detrimental consequences of its compactness problems." *Ante,* at 442. The majority does "not question" the District Court's parsing of the statistical evidence to reach the finding that District 25 was an effective Latino opportunity district. *Ante,* at 434. But the majority nonetheless rejects that finding, based on its own theory that "[t]he practical consequence of drawing a district to cover two distant, disparate communities is that one or both groups will be unable to achieve their political goals," *ibid.,* and because the finding rests on the "prohibited assumption" that voters of the same race will "think alike, share the same political interests, and will prefer the same candidates at the polls," *ante,* at 433

(internal quotation marks omitted). It is important to be perfectly clear about the following, out of fairness to the District Court if for no other reason: No one has made any "assumptions" about how voters in District 25 will vote based on their ethnic background. Not the District Court; not this dissent. There was a trial. At trials, assumptions and assertions give way to facts. In voting rights cases, that is typically done through regression analyses of past voting records. Here, those analyses showed that the Latino candidate of choice prevailed in every primary and general election examined for District 25. See *Session*, 298 F. Supp. 2d, at 499-500. Indeed, a plaintiffs' expert conceded that Latino voters in District 25 "have an effective opportunity to control outcomes in both primary and general elections." *Id.,* at 500. The District Court, far from "assum[ing]" that Latino voters in District 25 would "prefer the same candidate at the polls," concluded that they were likely to do so based on statistical evidence of historic voting patterns.

Contrary to the erroneous statements in the majority opinion, the District Court judges did *not* simply "aggregat[e]" minority voters to measure effectiveness. *Ante,* at 432. They did *not* simply rely on the "mathematical possibility" of minority voters
501 voting for the same preferred *501 candidate, *ante,* at 435, and it is a disservice to them to state otherwise. It is the majority that is indulging in unwarranted "assumption[s]" about voting, contrary to the facts found at trial based on carefully considered evidence.

What is blushingly ironic is that the district preferred by the majority—former District 23—suffers from the same "flaw" the majority ascribes to District 25, except to a greater degree. While the majority decries District 25 because the Latino communities there are separated by "enormous geographical distance," *ibid.,* and are "hundreds of miles apart," *ante,* at 441, Latino communities joined to form the voting majority in old District 23 are nearly twice as far apart. Old District 23 runs "from El Paso, over 500 miles, into San Antonio and down into Laredo. It covers a much longer distance than . . . the 300 miles from Travis to McAllen [in District 25]." App. 292 (testimony of T. Giberson); see *id.,* at 314 (expert report of T. Giberson) ("[D]istrict 23 in any recent Congressional plan extends from the outskirts of El Paso down to Laredo, dipping into San Antonio and spanning 540 miles"). So much for the significance of "enormous geographical distance." Or perhaps the majority is willing to "assume" that Latinos around San Antonio have common interests with those on the Rio Grande rather than those around Austin, even though San Antonio and Austin are a good bit closer to each other (less than 80 miles apart) than either is to the Rio Grande.[*]

502 *502 The District Court considered expert evidence on projected election returns and concluded that District 25 would likely perform impeccably for Latino voters, better indeed than former District 23. See *Session*, 298 F. Supp. 2d, at 503-504, 488, 489, 496. The District Court also concluded that the other districts in Plan 1374C would give Latino voters a favorable opportunity to elect their preferred candidates. See *id.,* at 499 (observing the parties' agreement that Districts 16 and 20 in Plan 1374C "do clearly provide effective Latino citizen voting age population majorities"); *id.,* at 504 ("Latino voters will likely control every primary and general election outcome" in District 28, and "every primary outcome and almost every general election outcome" in Districts 15 and 27, under Plan 1374C). In light of these findings, the District Court concluded that "compared to Plan 1151C . . . Plaintiffs have not shown an impermissible reduction in effective opportunities for Latino electoral control or in opportunities for Latino participation in the political process." *Ibid.*

Viewed against this backdrop, the majority's holding that Plan 1374C violates § 2 amounts to this: A State has denied minority voters equal opportunity to "participate in the political process and to elect representatives of their choice," 42 U. S. C. § 1973
503 (b), when the districts in the plan a State has created have *better* prospects for the success of *503 minority-preferred candidates than an alternative plan, simply because one of the State's districts combines different minority communities, which, in any event, are likely to vote as a controlling bloc. It baffles me how this could be vote dilution, let alone how the District Court's contrary conclusion could be clearly erroneous.

II

The majority arrives at the wrong resolution because it begins its analysis in the wrong place. The majority declares that a *Gingles* violation is made out "[c]onsidering" former District 23 "in isolation," and chides the State for suggesting that it can remedy this violation "by creating new District 25 as an offsetting opportunity district." *Ante,* at 429. According to the majority, "§ 2 does not forbid the creation of a noncompact majority-minority district," but "[t]he noncompact district cannot . . . remedy a violation elsewhere in the State." *Ante,* at 430.

The issue, however, is not whether a § 2 violation in District 23, viewed "in isolation," can be remedied by the creation of a Latino opportunity district in District 25. When the question is where a fixed number of majority-minority districts should be located, the analysis should never begin by asking whether a *Gingles* violation can be made out in any one district "in isolation."

In these circumstances, it is always possible to look at one area of minority population "in isolation" and see a "violation" of § 2 under *Gingles.* For example, if a State drew three districts in a group, with 60% minority voting-age population in the first two, and 40% in the third, the 40% can readily claim that their opportunities are being thwarted because *they* were not grouped with an additional 20% of minority voters from one of the other districts. But the remaining minority voters in the other districts would have precisely the same claim if minority voters were shifted from their districts to join the 40%. See *De Grandy*, 512 U. S., at 1015-1016 ("[S]ome dividing by district *504 lines and combining within them is virtually inevitable and befalls any population group of substantial size"). That is why the Court has explained that no individual minority voter has a right to be included in a majority-minority district. See *Shaw* v. *Hunt*, 517 U. S. 899, 917, and n. 9 (1996) *(Shaw II); id.,* at 947 (STEVENS, J., dissenting). Any other approach would leave the State caught between incompatible claims by different groups of minority voters. See *Session, supra*, at 499 ("[T]here is neither sufficiently dense and compact population in general nor Hispanic population in particular to support" retaining former District 23 *and* adding District 25).

The correct inquiry under § 2 is not whether a *Gingles* violation can be made out with respect to one district "in isolation," but instead whether line-drawing in the challenged area as a whole dilutes minority voting strength. A proper focus on the district lines in the area as a whole also demonstrates why the majority's reliance on *Bush* v. *Vera*, 517 U. S. 952 (1996), and *Shaw II* is misplaced.

In those cases, we rejected on the basis of lack of compactness districts that a State defended against equal protection strict scrutiny on the grounds that they were necessary to avoid a § 2 violation. See *Vera, supra*, at 977-981 (plurality opinion); *Shaw II, supra*, at 911, 916-918. But those cases never suggested that a plaintiff proceeding under § 2 could rely on lack of compactness to prove liability. And the districts in those cases were nothing like District 25 here. To begin with, they incorporated multiple, small, farflung pockets of minority population, and did so by ignoring the boundaries of political subdivisions. *Vera, supra*, at 987-989 (Appendices A-C to plurality opinion) (depicting districts); *Shaw II, supra*, at 902-903 (describing districts). Here the District Court found that the long and narrow but more normal shape of District 25 was shared by other districts both in the state plan and the predecessor plan—not to mention the plaintiffs' own proposed plan—and resulted from the demography *505 and geography of south and west Texas. See *Session*, 298 F. Supp. 2d, at 487-488, 491, and n. 125. And *none* of the minority voters in the *Vera* and *Shaw II* districts could have formed part of a *Gingles*-compliant district, see *Vera, supra*, at 979 (plurality opinion) (remarking of one of the districts at issue that it "reaches out to grab small and apparently isolated minority communities which, based on the evidence presented, could not possibly form part of a compact majority-minority district"); *Shaw II*, 517 U. S., at 916-917 (describing the challenged district as "in no way coincident with the compact *Gingles* district"); while here no one disputes that at least the Latino voters in the border area of District 25—the larger concentration—*must* be part of a Latino-majority district if six are to be placed in south and west Texas.

This is not, therefore, a case of the State drawing a majority-minority district "anywhere," once a § 2 violation has been established elsewhere in the State. *Id.,* at 917. The question is instead whether the State has some latitude in deciding where to place the maximum possible number of majority-minority districts, when one of those districts contains a substantial proportion of minority voters who *must* be in a majority-minority district if the maximum number is to be created at all.

Until today, no court has ever suggested that lack of compactness under § 2 might invalidate a district that a State has chosen to create in the first instance. The "geographica[l] compact[ness]" of a minority population has previously been only an element of the *plaintiff's* case. See *Gingles*, 478 U. S., at 49-50. That is to say, the § 2 plaintiff bears the burden of demonstrating that "the minority group . . . is sufficiently large and geographically compact to constitute a majority in a single-member district." *Id.,* at 50. Thus compactness, when it has been invoked by lower courts to defeat § 2 claims, has been applied to a remedial district a *plaintiff* proposes. See, *e. g., Sensley* v. *Albritton*, 385 F. 3d *506 591, 596-597 (CA5 2004); *Mallory* v. *Ohio*, 173 F. 3d 377, 382-383 (CA6 1999); *Stabler* v. *County of Thurston*, 129 F. 3d 1015, 1025 (CA8 1997). Indeed, the most we have had to say about the compactness aspect of the *Gingles* inquiry is to profess doubt whether it was met when the district a § 2 plaintiff proposed was "oddly shaped." *Growe* v. *Emison*, 507 U. S., at 38, 41. And even then, we rejected § 2 liability not because of the odd shape, but because no evidence of majority bloc voting had been submitted. *Id.,* at 41-42.

Far from imposing a freestanding compactness obligation on the States, we have repeatedly emphasized that "States retain broad discretion in drawing districts to comply with the mandate of § 2," *Shaw II, supra*, at 917, n. 9, and that § 2 itself imposes "no *per se* prohibitions against particular types of districts," *Voinovich* v. *Quilter*, 507 U. S., at 155. We have said that the States retain "flexibility" in complying with voting rights obligations that "federal courts enforcing § 2 lack." *Vera, supra*, at 978. The majority's intrusion into line-drawing, under the authority of § 2, when the lines already achieve the maximum possible number of majorityminority opportunity districts, suggests that all this is just so much hollow rhetoric.

The majority finds fault in a "one-way rule whereby plaintiffs must show compactness but States need not," *ante,* at 431, without bothering to explain how its contrary rule of equivalence between plaintiffs litigating and the elected representatives of the people legislating comports with our repeated assurances concerning the discretion and flexibility left to the States. Section 2 is, after all, part of the Voting Rights Act, not the Compactness Rights Act. The word "compactness" appears nowhere in § 2, nor even in the agreed-upon legislative history. See *Gingles, supra,* at 36-37. To bestow on compactness such precedence in the § 2 inquiry is the antithesis of the totality test that the statute contemplates. *De Grandy,* 512 U. S., at 1011 ("[T]he ultimate
507 conclusions about equality or inequality of opportunity *507 were intended by Congress to be judgments resting on comprehensive, not limited, canvassing of relevant facts"). Suggesting that determinative weight should have been given this one factor contravenes our understanding of how § 2 analysis proceeds, see *Gingles,* 478 U. S., at 45 (quoting statement from the legislative history of § 2 that "`there is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other'"), particularly when the proper standard of review for the District Court's ultimate judgment under § 2 is clear error, see *id.,* at 78-79.

A § 2 plaintiff has no legally protected interest in compactness, apart from how deviations from it dilute the equal opportunity of minority voters "to elect representatives of their choice." § 1973(b). And the District Court found that any effect on this opportunity caused by the different "needs and interests" of the Latino voters within District 25 was at least offset by the fact that, despite these differences, they were likely to prefer the same candidates at the polls. This finding was based on the evidence, not assumptions.

Whatever the competing merits of old District 23 and new District 25 at the margins, judging between those two majority-minority districts is surely the responsibility of the legislature, not the courts. See *Georgia* v. *Ashcroft,* 539 U. S. 461, 480 (2003). The majority's squeamishness about the supposed challenge facing a Latino-preferred candidate in District 25—having to appeal to Latino voters near the Rio Grande and those near Austin—is not unlike challenges candidates face around the country all the time, as part of a healthy political process. It is in particular not unlike the challenge faced by a Latino-preferred candidate in the district favored by the majority, former District 23, who must appeal to Latino voters both in San Antonio and in El Paso, 540 miles away. "[M]inority voters are not immune from the obligation to pull, haul, and trade to find common political
508 ground, the virtue of which is not to be slighted in applying *508 a statute meant to hasten the waning of racism in American politics." *De Grandy,* 512 U. S., at 1020. As the Court has explained, "the ultimate right of § 2 is equality of opportunity, not a guarantee of electoral success for minority-preferred candidates of whatever race." *Id.,* at 1014, n. 11. Holding that such *opportunity* is denied because a State draws a district with 55% minority citizen voting-age population, rather than keeping one with a similar percentage (but lower turnout) that did not in any event consistently elect minority-preferred candidates, gives an unfamiliar meaning to the word "opportunity."

III

Even if a plaintiff satisfies the *Gingles* factors, a finding of vote dilution under § 2 does not automatically follow. In *De Grandy,* we identified another important aspect of the totality inquiry under § 2: whether "minority voters form effective voting majorities in a number of districts roughly proportional to the minority voters' respective shares in the voting-age population." 512 U. S., at 1000. A finding of proportionality under this standard can defeat § 2 liability even if a clear *Gingles* violation has been made out. In *De Grandy* itself, we found that "substantial proportionality" defeated a claim that the district lines at issue "diluted the votes cast by Hispanic voters," 512 U. S., at 1014-1015, even assuming that the plaintiffs had shown "the possibility of creating *more* than the existing number of reasonably compact districts with a sufficiently large minority population to elect candidates of its choice," *id.,* at 1008-1009 (emphasis added).

The District Court determined that south and west Texas was the appropriate geographic frame of reference for analyzing proportionality: "If South and West Texas is the only area in which *Gingles* is applied and can be met, as Plaintiffs argue, it is
509 also the relevant area for measuring proportionality." *Session,* 298 F. Supp. 2d, at 494. As the court explained, *509 "[l]ower courts that have analyzed `proportionality' in the *De Grandy* sense have been consistent in using the same frame of reference for that factor and for the factors set forth in *Gingles.*" *Id.,* at 493-494, and n. 131 (citing cases).

In south and west Texas, Latinos constitute 58% of the relevant population and control 85% (six out of seven) of the congressional seats in that region. That includes District 25, because the District Court found, without clear error, that Latino voters in that district "will likely control every primary and general election outcome." *Id.,* at 504. But even not counting that district as a Latino opportunity district, because of the majority's misplaced compactness concerns, Latinos in south and west Texas still control congressional seats in a markedly greater proportion—71% (five out of seven)—than their share of the population there. In other words, in the only area in which the *Gingles* factors can be satisfied, Latino voters enjoy effective

political power 46% above their numerical strength, or, even disregarding District 25 as an opportunity district, 24% above their numerical strength. See *De Grandy*, 512 U. S., at 1017, n. 13. Surely these figures do not suggest a denial of equal *opportunity* to *participate* in the political process.

The majority's only answer is to shift the focus to statewide proportionality. In *De Grandy* itself, the Court rejected an argument that proportionality should be analyzed on a statewide basis as "flaw[ed]," because "the argument would recast these cases as they come to us, in order to bar consideration of proportionality except on statewide scope, whereas up until now the dilution claims have been litigated on a smaller geographical scale." *Id.,* at 1021-1022. The same is true here: The plaintiffs' § 2 claims concern "the impact of the legislative plan on Latino voting strength *in South and West Texas,*" *Session, supra,* at 486 (emphasis added), and that is the only area of the State in which they can satisfy the *Gingles* factors. That is accordingly the proper frame of reference in analyzing proportionality.

510 *510 In any event, at a statewide level, 6 Latino opportunity districts out of 32, or 19% of the seats, would certainly seem to be "roughly proportional" to the Latino 22% share of the population. See *De Grandy, supra,* at 1000. The District Court accordingly determined that proportionality suggested the lack of vote dilution, even considered on a statewide basis. *Session, supra,* at 494. The majority avoids that suggestion by disregarding the District Court's factual finding that District 25 is an effective Latino opportunity district. That is not only improper, for the reasons given, but the majority's rejection of District 25 as a Latino opportunity district is also flatly inconsistent with its statewide approach to analyzing proportionality. Under the majority's view, the Latino voters in the northern end of District 25 cannot "count" along with the Latino voters at the southern end to form an effective majority, because they belong to different communities. But Latino voters from everywhere around the State of Texas—even those from areas where the *Gingles* factors are not satisfied—can "count" for purposes of calculating the proportion against which effective Latino electoral power should be measured. Heads the plaintiffs win; tails the State loses.

* * *

The State has drawn a redistricting plan that provides six of seven congressional districts with an effective majority of Latino voting-age citizens in south and west Texas, and it is not possible to provide more. The majority nonetheless faults the state plan because of the *particular mix* of Latino voters forming the majority in one of the six districts—a combination of voters from around the Rio Grande and from around Austin, as opposed to what the majority uncritically views as the more monolithic majority assembled (from more farflung communities) in old District 23. This despite the express factual findings, from judges
511 far more familiar with Texas than we are, that the State's new district would be a *511 more effective Latino-majority district than old District 23 ever was, and despite the fact that *any* plan would necessarily leave *some* Latino voters outside a Latino-majority district.

Whatever the majority believes it is fighting with its holding, it is not vote dilution on the basis of race or ethnicity. I do not believe it is our role to make judgments about which *mixes* of minority voters should count for purposes of forming a majority in an electoral district, in the face of factual findings that the district is an effective majority-minority district. It is a sordid business, this divvying us up by race. When a State's plan already provides the maximum possible number of majority-minority effective opportunity districts, and the minority enjoys effective political power in the area well in *excess* of its proportion of the population, I would conclude that the courts have no further role to play in rejiggering the district lines under § 2.

I respectfully dissent from Part III of the Court's opinion.

JUSTICE SCALIA, with whom JUSTICE THOMAS joins, and with whom THE CHIEF JUSTICE and JUSTICE ALITO join as to Part III, concurring in the judgment in part and dissenting in part.

I

As I have previously expressed, claims of unconstitutional partisan gerrymandering do not present a justiciable case or controversy. See *Vieth* v. *Jubelirer,* 541 U. S. 267, 271-306 (2004) (plurality opinion). JUSTICE KENNEDY's discussion of appellants' political-gerrymandering claims ably demonstrates that, yet again, no party or judge has put forth a judicially discernible standard by which to evaluate them. See *ante,* at 413-423. Unfortunately, the opinion then concludes that appellants have failed to state a claim as to political gerrymandering, without ever articulating what the elements of such a
512 claim consist of. That is not an available disposition of this appeal. We must either conclude *512 that the claim is nonjusticiable and dismiss it, or else set forth a standard and measure appellants' claim against it. *Vieth, supra,* at 301. Instead, we again

dispose of this claim in a way that provides no guidance to lower court judges and perpetuates a cause of action with no discernible content. We should simply dismiss appellants' claims as nonjusticiable.

II

I would dismiss appellants' vote-dilution claims premised on §2 of the Voting Rights Act of 1965 for failure to state a claim, for the reasons set forth in JUSTICE THOMAS's opinion, which I joined, in *Holder* v. *Hall*, 512 U. S. 874, 891-946 (1994) (opinion concurring in judgment). As THE CHIEF JUSTICE makes clear, see *ante,* p. 492 (opinion concurring in part, concurring in judgment in part, and dissenting in part), the Court's § 2 jurisprudence continues to drift ever further from the Act's purpose of ensuring minority voters equal electoral opportunities.

III

Because I find no merit in either of the claims addressed by the Court, I must consider appellants' race-based equal protection claims. The GI Forum appellants focus on the removal of 100,000 residents, most of whom are Latino, from District 23. They assert that this action constituted intentional vote dilution in violation of the Equal Protection Clause. The Jackson appellants contend that the intentional creation of District 25 as a majority-minority district was an impermissible racial gerrymander. The District Court rejected the equal protection challenges to both districts.

A

The GI Forum appellants contend that the Texas Legislature removed a large number of Latino voters living in Webb County from District 23 with the purpose of diminishing Latino electoral power in that district. Congressional redistricting is primarily a
513 responsibility of state legislatures, and legislative motives are often difficult to discern. We presume, *513 moreover, that legislatures fulfill this responsibility in a constitutional manner. Although a State will almost always be aware of racial demographics when it redistricts, it does not follow from this awareness that the State redistricted on the basis of race. See *Miller* v. *Johnson*, 515 U. S. 900, 915-916 (1995). Thus, courts must "exercise extraordinary caution" in concluding that a State has intentionally used race when redistricting. *Id.,* at 916. Nevertheless, when considerations of race predominate, we do not hesitate to apply the strict scrutiny that the Equal Protection Clause requires. See, *e. g., Shaw* v. *Hunt*, 517 U. S. 899, 908 (1996) *(Shaw II); Miller, supra,* at 920.

At the time the legislature redrew Texas's congressional districts, District 23 was represented by Congressman Henry Bonilla, whose margin of victory and support among Latinos had been steadily eroding. See *Session* v. *Perry*, 298 F. Supp. 2d 451, 488-489 (ED Tex. 2004) *(per curiam)*. In the 2002 election, he won with less than 52 percent of the vote, *ante,* at 423-424 (opinion of the Court), and received only 8 percent of the Latino vote, *Session*, 298 F. Supp. 2d, at 488. The District Court found that the goal of the map drawers was to adjust the lines of that district to protect the imperiled incumbent: "The record presents undisputed evidence that the Legislature desired to increase the number of Republican votes cast in Congressional District 23 to shore up Bonilla's base and assist in his reelection." *Ibid.* To achieve this goal, the legislature extended the district north to include counties in the central part of the State with residents who voted Republican, adding 100,000 people to the district. Then, to comply with the one-person, one-vote requirement, the legislature took one-half of heavily Democratic Webb County, in the southern part of the district, and included it in the neighboring district. *Id.,* at 488-489.

Appellants acknowledge that the State redrew District 23 at least in part to protect Bonilla. They argue, however, that they
514 assert an intentional vote-dilution claim that is analytically distinct from the racial-gerrymandering claim of *514 the sort at issue in *Shaw* v. *Reno*, 509 U. S. 630, 642-649 (1993) *(Shaw I)*. A vote-dilution claim focuses on the majority's intent to harm a minority's voting power; a *Shaw I* claim focuses instead on the State's purposeful classification of individuals by their race, regardless of whether they are helped or hurt. *Id.,* at 651-652 (distinguishing the vote-dilution claim in *United Jewish Organizations of Williamsburgh, Inc.* v. *Carey*, 430 U. S. 144 (1977)). In contrast to a *Shaw I* claim, appellants contend, in a vote-dilution claim the plaintiff need not show that the racially discriminatory motivation *predominated,* but only that the invidious purpose was *a* motivating factor. Appellants contrast *Easley* v. *Cromartie*, 532 U. S. 234, 241 (2001) (in a racial-gerrymandering claim, "[r]ace must not simply have been *a* motivation for the drawing of a majority-minority district, but the *predominant* factor motivating the legislature's districting decision" (citation and internal quotation marks omitted)), with *Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U. S. 252, 265-266 (1977), and *Rogers* v. *Lodge*, 458 U. S. 613, 617 (1982). Whatever the validity of this distinction, on the facts of these cases it is irrelevant. The District Court's

conclusion that the legislature was not racially motivated when it drew the plan as a whole, *Session*, 298 F. Supp. 2d, at 473, and when it split Webb County, *id.*, at 509, dooms appellants' intentional-vote-dilution claim.

We review a district court's factual finding of a legislature's motivation for clear error. See *Easley, supra*, at 242. We will not overturn that conclusion unless we are "`left with the definite and firm conviction that a mistake has been committed.'" *Anderson* v. *Bessemer City*, 470 U. S. 564, 573 (1985) (quoting *United States* v. *United States Gypsum Co.*, 333 U. S. 364, 395 (1948)). I cannot say that the District Court clearly erred when it found that "[t]he legislative motivation for the division of Webb County between Congressional District 23 and Congressional District 28 in Plan 1374C was political." *Session, supra*, at 509.

515 *515 Appellants contend that the District Court had evidence of the State's intent to minimize Latino voting power. They note, for instance, that the percentage of Latinos in District 23's citizen voting-age population decreased significantly as a result of redistricting and that only 8 percent of Latinos had voted for Bonilla in the last election. They also point to testimony indicating that the legislature was conscious that protecting Bonilla would result in the removal of Latinos from the district and was pleased that, even after redistricting, he would represent a district in which a slight majority of voting-age residents was Latino. Of the individuals removed from District 23, 90 percent of those of voting age were Latinos, and 87 percent voted for Democrats in 2002. *Id.*, at 489. The District Court concluded that these individuals were removed because they voted for Democrats and against Bonilla, not because they were Latino. *Id.*, at 473, 508-510. This finding is entirely in accord with our case law, which has recognized that "a jurisdiction may engage in constitutional political gerrymandering, even if it so happens that the most loyal Democrats happen to be black Democrats and even if the State were *conscious* of that fact." *Hunt* v. *Cromartie*, 526 U. S. 541, 551 (1999). See also *Bush* v. *Vera*, 517 U. S. 952, 968 (1996) (plurality opinion) ("If district lines merely correlate with race because they are drawn on the basis of political affiliation, which correlates with race, there is no
516 racial classification to justify").[1] Appellants argue that in evaluating the State's stated motivation, the District *516 Court improperly conflated race and political affiliation by failing to recognize that the individuals moved were not Democrats, they just voted against Bonilla. But the District Court found that the State's purpose was to protect Bonilla, and not just to create a safe Republican district. The fact that the redistricted residents voted against Bonilla (regardless of how they voted in other races) is entirely consistent with the legislature's political and nonracial objective.

I cannot find, under the clear error standard, that the District Court was required to reach a different conclusion. See *Hunt, supra*, at 551. "Discriminatory purpose. . . implies more than intent as volition or intent as awareness of consequences. It implies that the decisionmaker. . . selected or reaffirmed a particular course of action at least in part `because of,' not merely `in spite of,' its adverse effects upon an identifiable group." *Personnel Administrator of Mass.* v. *Feeney*, 442 U. S. 256, 279 (1979) (citation, some internal quotation marks, and footnote omitted). The District Court cited ample evidence supporting its finding that the State did not remove Latinos from the district because they were Latinos: The new District 23 is more compact than it was under the old plan, see *Session*, 298 F. Supp. 2d, at 506, the division of Webb County simply followed the interstate highway, *id.*, at 509-510, and the district's "lines did not make twists, turns, or jumps that can be explained only as efforts to include Hispanics or exclude Anglos, or vice-versa," *id.*, at 511. Although appellants put forth alternative redistricting scenarios that would have protected Bonilla, the District Court noted that these alternatives would not have furthered the legislature's goal of increasing the number of Republicans elected statewide. *Id.*, at 497. See *Miller*, 515 U. S., at 915 ("Electoral districting is a most difficult subject for legislatures, and so the States must have discretion to exercise the political judgment necessary to
517 balance competing interests"). Nor is the District Court's finding at all impugned by the fact that certain legislators *517 were pleased that Bonilla would continue to represent a nominally Latino-majority district.

The ultimate inquiry, as in all cases under the Equal Protection Clause, goes to the State's purpose, not simply to the effect of state action. See *Washington* v. *Davis*, 426 U. S. 229, 238-241 (1976). Although it is true that the effect of an action can support an inference of intent, see *id.*, at 242, there is ample evidence here to overcome any such inference and to support the State's political explanation. The District Court did not commit clear error by accepting it.

B

The District Court's finding with respect to District 25 is another matter. There, too, the District Court applied the approach set forth in *Easley*, in which the Court held that race may be a motivation in redistricting as long as it is not the predominant one. 532 U. S., at 241. See also *Bush*, 517 U. S., at 993 (O'Connor, J., concurring) ("[S]o long as they do not subordinate traditional districting criteria to the use of race for its own sake or as a proxy, States may intentionally create majority-minority districts, and may otherwise take race into consideration, without coming under strict scrutiny"). In my view, however, when a legislature intentionally creates a majority-minority district, race is necessarily its predominant motivation and strict scrutiny is therefore

triggered. See *id.*, at 999-1003 (THOMAS, J., joined by SCALIA, J., concurring in judgment). As in *Bush, id.*, at 1002, the State's concession here sufficiently establishes that the legislature classified individuals on the basis of their race when it drew District 25: "[T]o avoid retrogression and achieve compliance with § 5 of the Voting Rights Act . . ., the Legislature chose to create a new Hispanic-opportunity district—new CD 25—which would allow Hispanics to actually elect its candidate of choice." Brief for State Appellees 106. The District Court similarly found that "the Legislature clearly intended to create a majority Latino citizen voting *518 age population district in Congressional District 25." *Session, supra*, at 511. Unquestionably, in my view, the drawing of District 25 triggers strict scrutiny.

Texas must therefore show that its use of race was narrowly tailored to further a compelling state interest. See *Shaw II*, 517 U. S., at 908. Texas asserts that it created District 25 to comply with its obligations under § 5 of the Voting Rights Act. Brief for State Appellees 105-106. That provision forbids a covered jurisdiction to promulgate any "standard, practice, or procedure" unless it "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race." 42 U. S. C. § 1973c. The purpose of § 5 is to prevent "retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Beer* v. *United States*, 425 U. S. 130, 141 (1976). Since its changes to District 23 had reduced Latino voting power in that district, Texas asserts that it needed to create District 25 as a Latino-opportunity district in order to avoid § 5 liability.

We have in the past left undecided whether compliance with federal antidiscrimination laws can be a compelling state interest. See *Miller, supra*, at 921; *Shaw II, supra*, at 911. I would hold that compliance with § 5 of the Voting Rights Act can be such an interest. We long ago upheld the constitutionality of § 5 as a proper exercise of Congress's authority under § 2 of the Fifteenth Amendment to enforce that Amendment's prohibition on the denial or abridgment of the right to vote. See *South Carolina* v. *Katzenbach*, 383 U. S. 301 (1966). If compliance with § 5 were not a compelling state interest, then a State could be placed in the impossible position of having to choose between compliance with § 5 and compliance with the Equal Protection Clause. Moreover, the compelling nature of the State's interest in § 5 compliance is supported by our recognition in previous cases that race may be used where necessary to remedy identified past discrimination. See, *e. g.*, *Shaw II, supra*, at 909 (citing *519 *Richmond* v. *J. A. Croson Co.*, 488 U. S. 469, 498-506 (1989)). Congress enacted § 5 for just that purpose, see *Katzenbach, supra*, at 309; *Beer, supra*, at 140-141, and that provision applies only to jurisdictions with a history of official discrimination, see 42 U. S. C. §§ 1973b(b), 1973c; *Vera* v. *Richards*, 861 F. Supp. 1304, 1317 (SD Tex. 1994) (recounting that, because of its history of racial discrimination, Texas became a jurisdiction covered by § 5 in 1975). In the proper case, therefore, a covered jurisdiction may have a compelling interest in complying with § 5.

To support its use of § 5 compliance as a compelling interest with respect to a particular redistricting decision, the State must demonstrate that such compliance was its "`actual purpose'" and that it had "`a strong basis in evidence' for believing," *Shaw II, supra*, at 908-909, n. 4 (citations omitted), that the redistricting decision at issue was "reasonably necessary under a constitutional reading and application of" the Act, *Miller*, 515 U. S., at 921.[2] Moreover, in order to tailor the use of race narrowly to its purpose of complying with the Act, a State cannot use racial considerations to achieve results beyond those that are required to comply with the statute. See *id.*, at 926 (rejecting the Department of Justice's policy that maximization of minority districts was required by § 5 and thus that this policy could serve as a compelling state interest). Section 5 forbids a State to take action that would worsen minorities' electoral opportunities; it does not require action that would improve them.

In determining whether a redistricting decision was reasonably necessary, a court must bear in mind that a State is permitted great flexibility in deciding how to comply with § 5's mandate. See *Georgia* v. *Ashcroft*, 539 U. S. 461, 479-483 (2003). For instance, we have recognized that § 5 does not constrain a State's choice between creating majority-minority districts or minority-influence districts. *Id.*, at *520 480-483. And we have emphasized that, in determining whether a State has impaired a minority's "effective exercise of the electoral franchise," a court should look to the totality of the circumstances statewide. These circumstances include the ability of a minority group "to elect a candidate of its choice" or "to participate in the political process," the positions of legislative leadership held by individuals representing minority districts, and support for the new plan by the representatives previously elected from these districts. *Id.*, at 479-485.

In light of these many factors bearing upon the question whether the State had a strong evidentiary basis for believing that the creation of District 25 was reasonably necessary to comply with § 5, I would normally remand for the District Court to undertake that "fact-intensive" inquiry. See *id.*, at 484, 490. Appellants concede, however, that the changes made to District 23 "necessitated creating an additional effective Latino district elsewhere, in an attempt to avoid Voting Rights Act liability." Brief for Appellant Jackson et al. in No. 05-276, p. 44. This is, of course, precisely the State's position. Brief for State Appellees 105-106. Nor do appellants charge that in creating District 25 the State did more than what was required by § 5.[3] In light of these concessions, I do not believe a remand is necessary, and I would affirm the judgment of the District Court.

[*] Together with No. 05-254, *Travis County, Texas, et al.* v. *Perry, Governor of Texas, et al.*, No. 05-276, *Jackson et al.* v. *Perry, Governor of Texas, et al.*, and No. 05-439, *GI Forum of Texas et al.* v. *Perry, Governor of Texas, et al.*, also on appeal from the same court.

[†] Briefs of *amici curiae* urging reversal in all cases were filed for the Brennan Center for Justice by *Deborah Goldberg* and *Michael Waldman;* for the Center for American Progress by *Walter Dellinger, Jonathan D. Hacker, Matthew M. Shors,* and *Jeffrey M. Wice;* for the Reform Institute et al. by *Daniel R. Ortiz;* for University Professors et al. by *Lucas A. Powe, Jr.;* and for Samuel Issacharoff et al. by *Richard H. Pildes, pro se,* and *Mr. Issacharoff, pro se.*

David W. Ogden, Jonathan E. Nuechterlein, Leonard M. Shambon, and *Jonathan H. Siegelbaum* filed a brief of *amici curiae* for the League of Women Voters of the United States et al. urging reversal in Nos. 05-204, 05-254, and 05-276.

Harold D. Hammett filed a brief for the Fort Worth-Tarrant County Branch NAACP as *amicus curiae* urging reversal in No. 05-276.

Briefs of *amici curiae* urging affirmance in all cases were filed for the State of Utah et al. by *Mark Shurtleff,* Attorney General of Utah, *Gene C. Schaerr, Steffen N. Johnson, James R. Thompson, George J. Chanos,* Attorney General of Nevada, and *Jim Petro,* Attorney General of Ohio; for the American Legislative Exchange Council et al. by *Marguerite Mary Leoni;* for the Republican National Committee by *Thomas J. Josefiak;* for Senator Robert C. Jubelirer by *John P. Krill, Jr.,* and *Linda J. Shorey;* for the Speaker of the Georgia House of Representatives Glenn Richardson et al. by *Anne W. Lewis* and *Frank B. Strickland;* and for Ron Wilson by *S. Shawn Stephens* and *Mr. Wilson, pro se.*

Maureen E. Mahoney filed a brief for Congressman Henry Bonilla as *amicus curiae* urging affirmance in No. 05-439.

Briefs of *amici curiae* were filed in all cases for the NAACP Legal Defense and Educational Fund, Inc., by *Theodore M. Shaw, Jacqueline A. Berrien, Norman J. Chachkin,* and *Debo P. Adegbile;* for Edward Blum et al. by *Frank M. Reilly* and *Marc A. Levin;* for Alan Heslop et al. by *E. Marshall Braden, Robert M. Doherty,* and *Clark H. Bensen;* and for Gary King et al. by *Justin A. Nelson* and *H. Lee Godfrey.*

Briefs of *amici curiae* were filed in No. 05-276 for the North Carolina State Conference of the National Association for the Advancement of Colored People by *Anita S. Earls, Julius L. Chambers,* and *John Charles Boger;* and for Neil H. Cogan by *Mr. Cogan, pro se.*

[1] It was apparently these electoral results that later caused the District Court to state that "the practical effect" of Plan 1151C "was to leave the 1991 Democratic Party gerrymander largely in place as a `legal' plan." *Henderson* v. *Perry,* 399 F. Supp. 2d 756, 768 (ED Tex. 2005); see *id.,* at 768, n. 52. But the existence of ticket-splitting voters hardly demonstrates that Plan 1151C was biased in favor of Democrats. Instead, as noted above, even the State's expert in this litigation concluded that Plan 1151C was, if anything, biased in favor of Republicans. Nor do the circumstances surrounding the replacement of Plan 1151C suggest that the legislature was motivated by a misimpression that Plan 1151C was unfair to Republicans, and accordingly should be replaced with a more equitable map. Rather, as discussed in detail below, it is clear that the sole motivation for enacting a new districting map was to maximize Republican advantage.

[2] These two standard measures of compactness are the perimeter-to-area score, which compares the relative length of the perimeter of a district to its area, and the smallest circle score, which compares the ratio of space in the district to the space in the smallest circle that could encompass the district. App. 178.

[3] The State suggests that in the process of drawing districts the architects of Plan 1374C frequently followed county lines, made an effort to keep certain entire communities within a given district, and otherwise followed certain neutral principles. But these facts are not relevant to the narrow question presented by these cases: Neutral motivations in the implementation of particular features of the redistricting do not qualify the solely partisan motivation behind the basic decision to adopt an entirely unnecessary plan in the first place.

[4] As noted above, rather than identifying any arguably neutral reasons for adopting Plan 1374C, the record establishes a purely partisan single-minded motivation with unmistakable clarity. Therefore, there is no need at this point to discuss standards that would guide judges in enforcing a rule allowing legislatures to be motivated in part by partisan considerations, but which would impose an "obligation not to apply *too much* partisanship in districting." *Vieth* v. *Jubelirer,* 541 U. S. 267, 286 (2004) (plurality opinion). Deciding that 100% is "too much" is not only a manageable decision, but, as explained below, it is also an obviously correct one. Nonetheless, it is worth emphasizing that courts do, in fact, possess the tools to employ standards that permit legislatures to consider partisanship in the redistricting process, but which do not allow legislatures to use partisanship as the predominant motivation for their actions. See Part IV, *infra.*

[5] See *Larios* v. *Cox,* 300 F. Supp. 2d 1320, 1342-1353 (ND Ga. 2004) *(per curiam)*. In *Cox,* the three-judge District Court undertook a searching review of the entire record in concluding that the population deviations in the state legislative districts created for the Georgia House and Senate after the release of the 2000 census data were not driven by any traditional redistricting criteria, such as compactness or preserving county lines, but were instead driven by the impermiss ble factors of regional favoritism and the discriminatory protection of Democratic incumbents. If there were no judicially manageable standards to assess whether a State's adoption of a redistricting map was based on valid governmental objectives, we would not have summarily affirmed the decision in *Cox* over the dissent of only one Justice. See 542 U. S. 947; *id.,* at 951 (SCALIA, J., dissenting). In addition, as Part III of the Court's opinion and this Part of my opinion demonstrate, assessing whether a redistricting map has a discriminatory impact on the opportunities for voters and candidates of a particular party to influence the political process is a manageable judicial task.

[6] Although the burdened group at issue in this litigation consists of Democratic voters and candidates, the partisan gerrymandering analysis throughout this opinion would be equally applicable to any "politically coherent group whose members engaged in bloc voting." *Vieth,* 541 U. S., at 347 (SOUTER, J., joined by GINSBURG, J., dissenting).

[7] In the 2004 congressional elections, Republicans won 21 of the 22 seats that had been designed to favor Republicans in Plan 1374C. One Democratic incumbent, Representative Chet Edwards, narrowly defeated (with 51% of the vote) his nonincumbent Republican challenger in a Republican-leaning district; Edwards outspent his challenger, who lacked strong ties to the principal communities in the district. Republicans are l kely to spend more money and find a stronger challenger in 2006, which will create a "very significant chance" of a Republican defeating Edwards. App. to Juris. Statement 224a, 226a.

[8] If 10% of Republican voters decided to vote for Democratic candidates, and if there were no other changes in voter turnout or preferences, the Republicans' share of the statewide vote would be reduced from 58% to 52%.

[9] JUSTICE KENNEDY faults proponents of the symmetry standard for not "providing a standard for deciding how much partisan dominance is too much," *ante,* at 420. But it is this Court, not proponents of the symmetry standard, that has the judicial obligation to answer the question of how much unfairness is too much. It would, of course, be an eminently manageable standard for the Court to conclude that deviations of over 10% from symmetry create a prima facie case of an unconstitutional gerrymander, just as population deviations among districts of more than 10% create such a prima facie case. Or, the Court could conclude that a significant departure from symmetry is one relevant factor in analyzing whether, under the totality of the circumstances, a districting plan is an unconstitutional partisan gerrymander. See n. 11, *infra.* At any rate, proponents of the symmetry standard have provided a helpful (though certainly not talismanic) tool in this type of litigation. While I appreciate JUSTICE KENNEDY's leaving the door open to the use of the standard in future cases, see *ante,* at 419-420, I believe it is the role of this Court, not social scientists, to determine how much partisan dominance is too much.

[10] Safe seats may harm the democratic process in other ways as well. According to one recent article coauthored by a former Chairman of the Federal Election Commission, electoral competition "plainly has a positive effect on the interest and participation of voters in the electoral process." Potter & Viray, Election Reform: Barriers to Participation, 36 U. Mich. J. L. Reform 547, 575 (2003) (hereinafter Potter & Viray); see also L. Guinier, Tyranny of the Majority 85 (1994). The impact of noncompetitive elections in depressing voter turnout is especially troubling in light of the fact that voter participation in the United States lags behind, often well behind, participation rates in other democratic nations. Potter & Viray 575-576, and n. 200. In addition, the creation of safe seats tends to polarize decisionmaking bodies. See, *e. g., Clingman* v. *Beaver,* 544 U. S. 581, 620 (2005) (STEVENS, J., joined by GINSBURG, J., dissenting) (noting that safe districts can "increase the bitter partisanship that has already poisoned some of those [legislative] bodies that once provided inspiring examples of courteous adversary debate and deliberation"); Cox, Partisan Gerrymandering and Disaggregated Redistricting, 2004 S. Ct. Rev. 409, 430 (arguing that "safe seats produce more polarized representatives because, by definition, the median voter in a district that is closely divided between the two major parties is more centrist than the median voter in a district dominated by one party"); Raviv, Unsafe Harbors: One Person, One Vote and Partisan Redistricting, 7 U. Pa. J. Const. L. 1001, 1068 (2005) (arguing that safe districts encourage polarization in decisionmaking bodies because representatives from those districts have to cater only to voters from one party). See generally Issacharoff & Karlan, Where to Draw the Line?: Judicial Review of Political Gerrymanders, 153 U. Pa. L. Rev. 541, 574 (2004) (providing data about the large percentage of safe seats in recent congressional and state legislative elections, and concluding that "[n]on-competitive elections threaten both the legitimacy and the vitality of democratic governance").

[11] In this litigation expert testimony provided the principal evidence about the effects of the plan that satisfy the test JUSTICE KENNEDY would impose. In my judgment, however, most statewide challenges to an alleged gerrymander should be evaluated primarily by examining these objective factors: (1) the number of people who have been moved from one district to another, (2) the number of districts that are less compact than their predecessors, (3) the degree to which the new plan departs from other neutral districting criteria, including respect for communities of interest and compliance with the Voting Rights Act, (4) the number of districts that have been cracked in a manner that weakens an opposition party incumbent, (5) the number of districts that include two incumbents from the opposite party, (6) whether the adoption of the plan gave the opposition party, and other groups, a fair opportunity to have input in the redistricting process, (7) the number of seats that are l kely to be safe seats for the dominant party, and (8) the size of the departure in the new plan from the symmetry standard.

[12] Justice BREYER has authorized me to state that he agrees with JUSTICE SCALIA that compliance with § 5 of the Voting Rights Act is also a compelling state interest. See *post,* at 518 (opinion concurring in judgment in part and dissenting in part). I, too, agree with JUSTICE SCALIA on this point.

[13] If, on the other hand, the State could demonstrate, for example, that the new district was part of a statewide scheme designed to apportion power fairly among politically salient groups, or to enhance the political power of an underrepresented community of interest (such as residents of an economically distressed region), the State would avoid liability even if the results of such statewide districting had predictably partisan effects. See generally *Vieth,* 541 U. S., at 351-352 (SOUTER, J., joined by GINSBURG, J., dissenting) (discussing legitimate interests that a State could posit as a defense to a prima facie case of partisan gerrymandering).

[14] This assumption is justified based on counsel's undisputed representations at oral argument. See Tr. of Oral Arg. 35. However, if there were any genuine dispute about whether there are plaintiffs whose residences were previously located in *Balderas* District 24, but which are now incorporated into Districts 6, 24, 26, and 32, a remand would be appropriate to allow the District Court to address this issue.

[15] In the decision below, the District Court concluded that black voters did not in fact "control" electoral outcomes in District 24. See *Session* v. *Perry,* 298 F. Supp. 2d 451, 498 (2004). Even assuming, as JUSTICE KENNEDY concludes, see *ante,* at 444-446, that the District Court did not commit revers ble error in its analysis of this issue, the lack of "control" might be relevant in analyzing plaintiffs' vote dilution claim under § 2, but it is not relevant in evaluating whether Plan 1374C is retrogressive under § 5. It is indisputable that, at the very least, *Balderas* District 24 was a strong influence district for black voters, that is, a district where voters of color can "play a substantial, if not decisive, role in the electoral process." *Georgia* v. *Ashcroft,* 539 U. S. 461, 482 (2003). Accordingly, by dismantling *Balderas* District 24, and by failing to create a strong

influence district elsewhere, Plan 1374C was retrogressive. See 539 U. S., at 482 (explaining that, in deciding whether a plan is retrogressive, "a court must examine whether a new plan adds or subtracts `influence districts'").

[16] As Justice KENNEDY explains, see *ante,* at 443-447, plaintiffs did, however, challenge District 24 under § 2. I am in substantial agreement with Justice SOUTER's discussion of this issue. See *post,* at 485-490 (opinion concurring in part and dissenting in part). Specifically, I agree with Justice SOUTER that the "50% rule," which finds no support in the text, history, or purposes of § 2, is not a proper part of the statutory vote dilution inquiry. For the reasons stated in my analysis of the "unique question of law . . . raised in this appeal," *supra,* at 456, and in this part of my opinion, however, it is so clear that the cracking of District 24 created an unconstitutional gerrymander that I find it unnecessary to address the statutory issue separately.

[17] Because new District 12, another district that covers portions of former District 24, is more compact than *Balderas* District 24, voters in new District 12 who previously resided in *Balderas* District 24 would not be able to bring a successful partisan gerrymandering claim under my proposed test, even though new District 12 is also a safe Republican district. See App. 106, 319-320.

[1] In a subsequent case, however, we did not state the first *Gingles* condition in terms of an absolute majority. See *Johnson* v. *De Grandy,* 512 U.S. 997, 1008 (1994) ("[T]he first *Gingles* condition requires the possibility of creating more than the existing number of reasonably compact districts with a sufficiently large minority population to elect candidates of its choice").

[2] L ke JUSTICE STEVENS, I agree with JUSTICE SCALIA that compliance with § 5 is a compelling state interest. See *ante,* at 475, n. 12 (STEVENS, J., concurring in part and dissenting in part); *post,* at 518-519 (SCALIA, J., concurring in judgment in part and dissenting in part).

[3] I recognize that a minority group might satisfy the § 2 "ability to elect" requirement in other ways, and I do not mean to rule out other circumstances in which a coalition district might be required by § 2. A minority group slightly less than 50% of the electorate in nonpartisan elections for a local school board might, for example, show that it can elect its preferred candidates owing to consistent crossover support from members of other groups. Cf. *Valdespino* v. *Alamo Heights Independent School Dist.,* 168 F.3d 848, 850-851 (CA5 1999), cert. denied, 528 U.S. 1114 (2000).

[4] Cf. *California Democratic Party* v. *Jones,* 530 U.S. 567, 575 (2000) ("In no area is the political association's right to exclude more important than in the process of selecting its nominee. That process often determines the party's positions on the most significant public policy issues of the day, and even when those positions are predetermined it is the nominee who becomes the party's ambassador to the general electorate in winning it over to the party's views").

[5] One must be careful about what such electoral success ostensibly shows; if the primary choices are constrained, say, by party rules, the minority voters' choice in the primary may not be truly their candidate of choice, see Note, *Gingles* In Limbo: Coalitional Districts, Party Primaries and Manageable Vote Dilution Claims, 80 N. Y. U. L. Rev. 312 (2005).

[6] Judge Ward properly noted that the fact that Frost has gone unchallenged may "reflect favorably on his record" of responding to the concerns of minorities in the district. See *Session* v. *Perry,* 298 F. Supp. 2d 451, 530 (ED Tex. 2004) (opinion concurring in part and dissenting in part).

[7] In any event, although a history or prophecy of success in electing candidates of choice is a powerful touchstone of § 2 liability when minority populations are cracked or packed, electoral success is not the only manifestation of equal opportunity to participate in the political process, see *De Grandy,* 512 U.S., at 1014, n. 11. The diminution of that opportunity by taking minority voters who previously dominated the dominant party's primary and submerging them in a new district is not readily discounted by speculating on the effects of a black-white primary contest in the old district.

[8] The way this third condition is understood when a claim of a putative coalition district is made will have implications for the identification of candidate of choice under the first *Gingles* condition. Suffice it to say here that the criteria may not be the same when dealing with coalition districts as in cases of districts with majority-minority populations. All aspects of our established analysis for majority-minority districts in *Gingles* and its progeny may have to be rethought in analyzing ostensible coalition districts.

[9] Notably, under the Texas Legislature's Plan 1374C, there are three undisputed districts where African-Americans tend to elect their candidates of choice. African-Americans compose at most a citizen voting-age majority (50.6%) in one of the three, District 30, see *Session, supra,* at 515; even there, the State's expert pegged the percentage at 48.6%, App. 185-186. In any event, the others, Districts 9 and 18, are coalition districts, with African-American citizen voting-age populations of 46.9% and 48.6% respectively. *Id.,* at 184-185.

[*] The majority's fig leaf after stressing the distances involved in District 25—while ignoring the greater ones in former District 23—is to note that "it is the enormous geographical distance separating the Austin and Mexican-border communities, coupled with the disparate needs and interests of these populations—not either factor alone—that renders District 25 noncompact for § 2 purposes." *Ante,* at 435. Of course no single factor is determinative because the ultimate question is whether the district is an effective majority-minority opportunity district. There was a trial on that; the District Court found that District 25 was, while former District 23 "did not perform as an effective opportunity district." *Session* v. *Perry,* 298 F. Supp. 2d 451, 496 (ED Tex. 2004) *(per curiam).* The majority notes that there was no challenge to or finding on the compactness of old District 23, *ante,* at 435—certainly not compared to District 25—but presumably that was because, as the majority does not dispute, "[u]ntil today, no court has ever suggested that lack of compactness under § 2 might invalidate a district that a State has chosen to create in the first instance," *infra,* at 505. The majority asserts that Latino voters in old District 23 had found an "efficacious political identity," while doing so would be a challenge for such voters in District 25, *ante,* at 435, but the latter group has a distinct advantage over the former in

this regard: They actually *vote* to a significantly greater extent. See App. 187 (expert report of R. Gaddie) (for Governor and Senate races in 2002, estimated Latino turnout for District 25 was 46% to 51%, compared to 41.3% and 44% for District 23).

[1] The District Court did not find that the legislature had two motivations in dividing Webb County, one invidious and the other political, and that the political one predominated. Rather, it accepted the State's explanation that although the individuals moved were largely Latino, they were moved because they voted for Democrats and against Bonilla. For this reason, appellants' argument that incumbent protection cannot be a compelling state interest is off the mark. The District Court found that incumbent protection, not race, lay behind the redistricting of District 23. Strict scrutiny therefore does not apply, and the existence *vel non* of a compelling state interest is irrelevant.

[2] No party here raises a constitutional challenge to § 5 as applied in these cases, and I assume its application is consistent with the Constitution.

[3] Appellants argue that in *Bush* v. *Vera*, 517 U. S. 952 (1996), we did not allow the purpose of incumbency protection in one district to justify the use of race in a neighboring district. That is not so. What we held in *Bush* was that the District Court had not clearly erred in concluding that, although the State had political incumbent-protection purposes as well, its use of race predominated. See *id.,* at 969 (plurality opinion). We then applied strict scrutiny, as I do here. But we said nothing more about incumbency protection as part of that analysis. Rather, we rejected the State's argument that compliance with § 5 was a compelling interest because the State had gone beyond mere nonretrogression. *Id.,* at 983; *id.,* at 1003 (THOMAS, J., joined by SCALIA, J., concurring in judgment).

Exhibit 2

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

LEAGUE OF UNITED LATIN AMERICAN CITIZENS ET AL. *v.* PERRY, GOVERNOR OF TEXAS, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS

No. 05–204. Argued March 1, 2006—Decided June 28, 2006*

The 1990 census resulted in a 3-seat increase over the 27 seats previously allotted the Texas congressional delegation. Although the Democratic Party then controlled 19 of those 27 seats, as well as both state legislative houses and the governorship, change was in the air: The Republican Party had received 47% of the 1990 statewide vote, while the Democrats had received only 51%. Faced with a possible Republican ascent to majority status, the legislature drew a congressional redistricting plan that favored Democratic candidates. The Republicans challenged the 1991 Plan as an unconstitutional partisan gerrymander, but to no avail.

The 2000 census authorized two additional seats for the Texas delegation. The Republicans then controlled the governorship and the State Senate, but did not yet control the State House of Representatives. So constituted, the legislature was unable to pass a redistricting scheme, resulting in litigation and the necessity of a court-ordered plan to comply with the U. S. Constitution's one-person, one-vote requirement. Conscious that the primary responsibility for drawing congressional districts lies with the political branches of government, and hesitant to undo the work of one political party for the benefit of another, the three-judge Federal District Court sought to apply only "neutral" redistricting standards when drawing Plan 1151C, including placing the two new seats in high-growth areas, fol-

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*Together with No. 05–254, *Travis County, Texas, et al.* v. *Perry, Governor of Texas, et al.,* No. 05–276, *Jackson et al.* v. *Perry, Governor of Texas, et al.,* and No. 05–439, *GI Forum of Texas et al.* v. *Perry, Governor of Texas, et al.,* also on appeal from the same court.

lowing county and voting precinct lines, and avoiding the pairing of incumbents. Under Plan 1151C, the 2002 congressional elections resulted in a 17-to-15 Democratic majority in the Texas delegation, compared to a 59% to 40% Republican majority in votes for statewide office in 2000, thus leaving the 1991 Democratic gerrymander largely in place.

In 2003, however, Texas Republicans gained control of both houses of the legislature and set out to increase Republican representation in the congressional delegation. After a protracted partisan struggle, the legislature enacted a new congressional districting map, Plan 1374C. In the 2004 congressional elections, Republicans won 21 seats to the Democrats' 11, while also obtaining 58% of the vote in statewide races against the Democrats' 41%. Soon after Plan 1374C was enacted, appellants challenged it in court, alleging a host of constitutional and statutory violations. In 2004 the District Court entered judgment for appellees, but this Court vacated the decision and remanded for consideration in light of *Vieth* v. *Jubelirer,* 541 U. S. 267. On remand, the District Court, believing the scope of its mandate was limited to questions of political gerrymandering, again rejected appellants' claims.

Held: The judgment is affirmed in part, reversed in part, and vacated in part, and the cases are remanded.

399 F. Supp. 2d 756, affirmed in part, reversed in part, vacated in part, and remanded.

JUSTICE KENNEDY delivered the opinion of the Court with respect to Parts II–A and III, concluding:

1. This Court held, in *Davis* v. *Bandemer,* 478 U. S. 109, 118–127, that an equal protection challenge to a political gerrymander presents a justiciable case or controversy, although it could not agree on what substantive standard to apply, compare *id.,* at 127–137, with *id.,* at 161–162. That disagreement persists. The *Vieth* plurality would have held such challenges nonjusticiable political questions, but a majority declined to do so, see 541 U. S., at 306, 317, 343, 355. Justiciability is not revisited here. At issue is whether appellants offer a manageable, reliable measure of fairness for determining whether a partisan gerrymander is unconstitutional. P. 7.

2. Texas' redrawing of District 23's lines amounts to vote dilution violative of §2 of the Voting Rights Act of 1965. Pp. 17–36.

(a) Plan 1374C's changes to District 23 served the dual goals of increasing Republican seats and protecting the incumbent Republican against an increasingly powerful Latino population that threatened to oust him, with the additional political nuance that he would be reelected in a district that had a Latino majority as to voting age population, though not a Latino majority as to citizen voting age

population or an effective Latino voting majority. The District 23 changes required adjustments elsewhere, so the State created new District 25 to avoid retrogression under §5 of the Act. Pp. 17–18.

(b) A State violates §2 "if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election . . . are not [as] equally open to . . . members of [a racial group as they are to] other members of the electorate." 42 U. S. C. §1973(b). *Thornburg* v. *Gingles,* 478 U. S. 30, 50–51, identified three threshold conditions for establishing a §2 violation: (1) the racial group must be "sufficiently large and geographically compact to constitute a majority in a single-member district"; (2) the group must be "politically cohesive"; and (3) the white majority must "vot[e] sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." The legislative history identifies factors that courts can use, once all three threshold requirements are met, in interpreting §2's "totality of circumstances" standard, including the State's history of voting-related discrimination, the extent to which voting is racially polarized, and the extent to which the State has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group. See *id.,* at 44–45. Another relevant consideration is whether the number of districts in which the minority group forms an effective majority is roughly proportional to its share of the population in the relevant area. *Johnson* v. *De Grandy,* 512 U. S. 997, 1000. The district court's determination whether the §2 requirements are satisfied must be upheld unless clearly erroneous. See *Gingles, supra*, at 78–79. Where "the ultimate finding of dilution" is based on "a misreading of the governing law," however, there is reversible error. *De Grandy, supra*, at 1022. Pp. 18–20.

(c) Appellants have satisfied all three *Gingles* requirements as to District 23, and the creation of new District 25 does not remedy the problem.

The second and third *Gingles* factors—Latino cohesion, majority bloc voting—are present, given the District Court's finding of racially polarized voting in the District 23 and throughout the State. As to the first *Gingles* precondition—that the minority group be large and compact enough to constitute a majority in a single-member district, 478 U. S., at 50—appellants have established that Latinos could have had an opportunity district in District 23 had its lines not been altered and that they do not have one now. They constituted a majority of the citizen voting age population in District 23 under Plan 1151C. The District Court suggested incorrectly that the district was not a Latino opportunity district in 2002 simply because the incumbent prevailed. The fact that a group does not win elections does not resolve the vote dilution issue. *De Grandy,* 512 U. S., at 1014, n. 11.

In old District 23 the increase in Latino voter registration and overall population, the concomitant rise in Latino voting power in each successive election, the near victory of the Latino candidate of choice in 2002, and the resulting threat to the incumbent's continued election were the very reasons the State redrew the district lines. Since the redistricting prevented the immediate success of the emergent Latino majority in District 23, there was a denial of opportunity in the real sense of that term. Plan 1374C's version of District 23, by contrast, is unquestionably not a Latino opportunity district. That Latinos are now a bare majority of the district's voting-age population is not dispositive, since the relevant numbers must account for citizenship in order to determine the group's opportunity to elect candidates, and Latinos do not now have a citizen voting-age majority in the district.

The State's argument that it met its §2 obligations by creating new District 25 as an offsetting opportunity district is rejected. In a district line-drawing challenge, "the first *Gingles* condition requires the possibility of creating more than the existing number of reasonably compact districts with a sufficiently large minority population to elect candidates of its choice." *Id.,* at 1008. The District Court's finding that the current plan contains six Latino opportunity districts and that seven reasonably compact districts, as proposed by appellant GI Forum, could not be drawn was not clearly erroneous. However, the court failed to perform the required compactness inquiry between the number of Latino opportunity districts under the challenger's proposal of reinstating Plan 1151C and the "existing number of reasonably compact districts." *Ibid.* Section 2 does not forbid the creation of a noncompact majority-minority district, *Bush* v. *Vera,* 517 U. S. 952, 999, but such a district cannot remedy a violation elsewhere in the State, see *Shaw* v. *Hunt,* 517 U. S. 899, 916. The lower court recognized there was a 300-mile gap between the two Latino communities in District 25, and a similarly large gap between the needs and interests of the two groups. The court's conclusion that the relative smoothness of the district lines made the district compact, despite this combining of discrete communities of interest, is inapposite because the court analyzed the issue only in the equal protection context, where compactness focuses on the contours of district lines to determine whether race was the predominant factor in drawing those lines. See *Miller* v. *Johnson,* 515 U. S. 900, 916–917. Under §2, by contrast, the injury is vote dilution, so the compactness inquiry considers "the compactness of the minority population, not . . . the compactness of the contested district." *Vera,* 517 U. S., at 997. A district that "reaches out to grab small and apparently isolated minority communities" is not reasonably compact. *Id.,* at 979. The lower court's findings regarding the different characteristics, needs, and interests

of the two widely scattered Latino communities in District 23 are well supported and uncontested. The enormous geographical distances separating the two communities, coupled with the disparate needs and interests of these populations—not either factor alone—renders District 25 noncompact for §2 purposes. Therefore, Plan 1374C contains only five reasonably compact Latino opportunity districts, one fewer than Plan 1151C. Pp. 20–29.

(d) The totality of the circumstances demonstrates a §2 violation. The relevant proportionality inquiry, see *De Grandy,* 512 U. S., at 1000, compares the percentage of total districts that are Latino opportunity districts with the Latino share of the citizen voting-age population. The State's contention that proportionality should be decided on a regional basis is rejected in favor of appellants' assertion that their claim requires a statewide analysis because they have alleged statewide vote dilution based on a statewide plan. Looking statewide, there are 32 congressional districts. The five reasonably compact Latino opportunity districts amount to roughly 16% of the total, while Latinos make up 22% of Texas' citizen voting-age population. Latinos are, therefore, two districts shy of proportional representation. Even deeming this disproportionality insubstantial would not overcome the other evidence of vote dilution for Latinos in District 23. The changes there undermined the progress of a racial group that has been subject to significant voting-related discrimination and that was becoming increasingly politically active and cohesive. Cf., *e.g., id.,* at 1014. Against this background, the Latinos' diminishing electoral support for the incumbent indicates their belief he was unresponsive to their particularized needs. In essence, the State took away their opportunity because they were about to exercise it. Even accepting the District Court's finding that the State's action was taken primarily for political, not racial, reasons, the redrawing of District 23's lines was damaging to its Latino voters. The State not only made fruitless the Latinos' mobilization efforts but also acted against those Latinos who were becoming most politically active. Although incumbency protection can be a legitimate factor in districting, see *Karcher* v. *Daggett*, 462 U. S. 725, 740, not all of its forms are in the interests of the constituents. If, as here, such protection means excluding some voters from the district simply because they are likely to vote against the officeholder, the change is to benefit the officeholder, not the voters. This policy, whatever its validity in the political realm, cannot justify the effect on Latino voters. See *Gingles, supra*, at 45. Pp. 29–36.

(e) Because Plan 1374C violates §2 in its redrawing of District 23, appellants' First Amendment and equal protection claims with respect to that district need not be addressed. Their equal protection

claim as to the drawing of District 25 need not be confronted because that district will have to be redrawn to remedy the District 23 violation. Pp. 36–37.

JUSTICE KENNEDY concluded in Part II that because appellants have established no legally impermissible use of political classifications, they state no claim on which relief may be granted as to their contention that Texas' statewide redistricting is an unconstitutional political gerrymander. JUSTICE SOUTER and JUSTICE GINSBURG joined Part II–D. Pp. 7–15.

(a) Article I of the Constitution, §§2 and 4, gives "the States primary responsibility for apportionment of their . . . congressional . . . districts," *Growe* v. *Emison,* 507 U. S. 25, 34, but §4 also permits Congress to set further requirements. Neither the Constitution nor Congress has stated any explicit prohibition of mid-decade redistricting to change districts drawn earlier in conformance with a decennial census. Although the legislative branch plays the primary role in congressional redistricting, courts have an important role when a districting plan violates the Constitution. See, *e.g.*, *Wesberry* v. *Sanders,* 376 U. S. 1. That the federal courts sometimes must order legislative redistricting, however, does not shift the primary responsibility away from legislative bodies, see, *e.g., Wise* v. *Lipscomb,* 437 U. S. 535, 540, who are free to replace court-mandated remedial plans by enacting redistricting plans of their own, see, *e.g.*, *Upham* v. *Seamon,* 456 U. S. 37, 44. Judicial respect for legislative plans, however, cannot justify legislative reliance on improper criteria for districting determinations. Pp. 7–10.

(b) Appellants claim unpersuasively that a decision to effect mid-decennial redistricting, when solely motivated by partisan objectives, presumptively violates equal protection and the First Amendment because it serves no legitimate public purpose and burdens one group because of its political opinions and affiliation. For a number of reasons, that test is unconvincing. There is some merit to the State's assertion that partisan gain was not the sole motivation for replacing Plan 1151C: The contours of some contested district lines seem to have been drawn based on more mundane and local interests, and a number of line-drawing requests by Democratic state legislators were honored. Moreover, a successful test for identifying unconstitutional partisan gerrymandering must do what appellants' sole-motivation theory explicitly disavows: show a burden, as measured by a reliable standard, on the complainants' representational rights. See *Vieth, supra*, at 292–295, 307–308. Appellants' sole-intent standard is no more compelling when it is linked to the circumstance that Plan 1374C is mid-decennial legislation. The Constitution's text and structure and this Court's cases indicate there is nothing inherently

suspect about a legislature's decision to replace mid-decade a court-ordered plan with one of its own. Even if there were, the fact of mid-decade redistricting alone is no sure indication of unlawful political gerrymanders. Appellants' test would leave untouched the 1991 Texas redistricting, which entrenched a party on the verge of minority status, while striking down the 2003 redistricting plan, which resulted in the majority Republican Party capturing a larger share of the seats. A test that treats these two similarly effective power plays in such different ways does not have the reliability appellants ascribe to it. Pp. 10–14.

(c) Appellants' political gerrymandering theory that mid-decade redistricting for exclusively partisan purposes violates the one-person, one-vote requirement is rejected. Although conceding that States operate under the legal fiction that their plans are constitutionally apportioned throughout a decade, see, *e.g., Georgia* v. *Ashcroft,* 539 U. S. 461, 488, n. 2, appellants contend that this fiction should not provide a safe harbor for a legislature that enacts a voluntary, mid-decade plan overriding a legal court-drawn plan. This argument mirrors appellants' attack on mid-decennial redistricting solely motivated by partisan considerations and is unsatisfactory for the same reasons. Their further contention that the legislature intentionally sought to manipulate population variances when it enacted Plan 1374C is unconvincing because there is no District Court finding to that effect, and they present no specific evidence to support this serious allegation of bad faith. Because they have not demonstrated that the legislature's decision to enact Plan 1374C constitutes a violation of the equal-population requirement, their subsidiary reliance on *Larios* v. *Cox*, 300 F. Supp. 2d 1320, summarily aff'd, 542 U. S. 947, is unavailing. Pp. 14–16.

JUSTICE KENNEDY, joined by THE CHIEF JUSTICE and JUSTICE ALITO, concluded in Part IV that the Dallas area redistricting does not violate §2 of the Voting Rights Act. Appellants allege that the Dallas changes dilute African-American voting strength because an African-American minority effectively controlled District 24 under Plan 1151C. However, before Plan 1374C, District 24 had elected an Anglo Democrat to Congress in every election since 1978. Since then, moreover, the incumbent has had no opposition in any of his primary elections, and African-Americans have consistently voted for him. African-Americans were the second-largest racial group in the district after Anglos, but had only 25.7% of the citizen voting age population. Even assuming that the first *Gingles* prong can accommodate appellants' assertion that a §2 claim may be stated for a racial group that makes up less than 50% of the population, see, *e.g., De Grandy, supra*, at 1009, they must show they constitute "a sufficiently large

minority to elect their candidate of choice with the assistance of cross-over votes," *Voinovich* v. *Quilter,* 507 U. S. 146, 158. The District Court committed no clear error in rejecting questionable evidence that African-Americans have the ability to elect their candidate of choice in favor of other evidence that an African-American candidate of choice would not prevail. See *Anderson* v. *Bessemer City,* 470 U. S. 564, 574. That African-Americans had influence in the district does not suffice to state a §2 claim. If it did, it would unnecessarily infuse race into virtually every redistricting, raising serious constitutional questions. See *Georgia* v. *Ashcroft,* 539 U. S. 461, 491. *Id.,* at 480, 482, distinguished. Appellants do not raise a district-specific political gerrymandering claim against District 24. Pp. 37–41.

THE CHIEF JUSTICE, joined by JUSTICE ALITO, agreed that appellants have not provided a reliable standard for identifying unconstitutional political gerrymanders, but noted that the question whether any such standard exists—*i.e.,* whether a challenge to such a gerrymander presents a justiciable case or controversy—has not been argued in these cases. THE CHIEF JUSTICE and JUSTICE ALITO therefore take no position on that question, which has divided the Court, see *Vieth* v. *Jubelirer,* 541 U. S. 267, and join the plurality's Part II disposition without specifying whether appellants have failed to state a claim on which relief can be granted or failed to present a justiciable controversy. Pp. 1–2.

JUSTICE SCALIA, joined by JUSTICE THOMAS, concluded that appellants' claims of unconstitutional political gerrymandering do not present a justiciable case or controversy, see *Vieth* v. *Jubelirer*, 541 U. S. 267, 271–306 (plurality opinion), and that their vote-dilution claims premised on §2 of the Voting Rights Act of 1965 lack merit for the reasons set forth in JUSTICE THOMAS's opinion concurring in the judgment in *Holder* v. *Hall*, 512 U. S. 874, 891–946. Reviewing appellants' race-based equal protection claims, JUSTICE SCALIA, joined by THE CHIEF JUSTICE, JUSTICE THOMAS, and JUSTICE ALITO, concluded that the District Court did not commit clear error in rejecting appellant GI Forum's assertion that the removal of Latino residents from District 23 constituted intentional vote dilution. JUSTICE SCALIA, joined by THE CHIEF JUSTICE, JUSTICE THOMAS, and JUSTICE ALITO, subjected the intentional creation of District 25 as a majority-minority district to strict scrutiny and held that standard satisfied because appellants conceded that the creation of this district was reasonably necessary to comply with §5 of the Voting Rights Act of 1965, which is a compelling state interest, and did not argue that Texas did more than that provision required it to do. Pp. 2–11.

KENNEDY, J., announced the judgment of the Court and delivered the

opinion of the Court with respect to Parts II–A and III, in which STEVENS, SOUTER, GINSBURG, AND BREYER, JJ., joined, an opinion with respect to Parts I and IV, in which ROBERTS, C. J., and ALITO, J., joined, an opinion with respect to Parts II–B and II–C, and an opinion with respect to Part II–D, in which SOUTER and GINSBURG, JJ., joined. STEVENS, J., filed an opinion concurring in part and dissenting in part, in which BREYER, J., joined as to Parts I and II. SOUTER, J., filed an opinion concurring in part and dissenting in part, in which GINSBURG, J., joined. BREYER, J., filed an opinion concurring in part and dissenting in part. ROBERTS, C. J., filed an opinion concurring in part, concurring in the judgment in part, and dissenting in part, in which ALITO, J., joined. SCALIA, J., filed an opinion concurring in the judgment in part and dissenting in part, in which THOMAS, J., joined, and in which ROBERTS, C. J., and ALITO, J., joined as to Part III.

Exhibit 3

TITLE 13—CENSUS

This title was enacted by act Aug. 31, 1954, ch. 1158, 68 Stat. 1012

TABLE SHOWING DISPOSITION OF ALL SECTIONS OF FORMER TITLE 13

Title 13 Former Sections	*Title 13 New Sections*
1	2
2	21
3, 4	Rep.
5	22
6	22
7–9	Rep.
21–41	Rep.
41a	Rep.
42–55	Rep.
61–69	Rep.
71	41
72	42
72a	42
73	9, 214
74	43, 224, 241
75	44
76	45
77	Rep.
81	61
82	5
83	9, 214
84	224, 241
85	62
86	63
91–98	Rep.
101	T. 42 § 244a
106	Rep.
106 note	Rep.
107	Rep.
111	5, 24, 101, 102, 103, 225
112	Rep.
113	101
114	Rep.
121	131, 181
122	6, 9, 24, 25, 211, 212, 213, 214, 221, 222, 223, 224, 225
123	5, 132
201	141
202	143
203	23, 24
204	5, 144
205	25
206	145
207	211
208	9, 212, 213
209	221, 222, 223
210	224
211	9
212	Rep.
213	7
214	10

[1] So in original. Does not conform to chapter heading.
[2] So in original. Probably should be capitalized.

TABLE SHOWING DISPOSITION OF ALL SECTIONS OF FORMER TITLE 13—Continued

Title 13 Former Sections	*Title 13 New Sections*
215	6
216	5, 23, 146
217	Rep.
218	8
219, 220	Rep.
251	5, 161, 163
252	6, 9, 24, 162, 211, 212, 213, 214
253	Rep.

AMENDMENTS

1990—Pub. L. 101–533, § 5(b)(1), Nov. 7, 1990, 104 Stat. 2348, added item for chapter 10.

1962—Pub. L. 87–826, § 1, Oct. 15, 1962, 76 Stat. 951, added item for chapter 9.

POSITIVE LAW; CITATION

This title has been made positive law by section 1 of act Aug. 31, 1954, ch. 1158, 68 Stat. 1012, which provided in part "That title 13 of the United States Code, entitled 'Census' is revised, codified and enacted into law and may be cited as 'Title 13, United States Code, section—'."

REFERENCES TO CENSUS OFFICE

Section 3 of act Aug. 31, 1954, ch. 1158, 68 Stat. 1024, provided that: "Whenever reference is made in any other law or in any regulation or order to the Census Office, such reference shall be held and considered to mean the Bureau of the Census referred to in section 2 of Title 13, United States Code, as set out in section 1 of this Act. This section shall not be construed as affecting historical references to the Census Office which could have no present or future application to the Bureau of the Census."

SEPARABILITY

Section 4 of act Aug. 31, 1954, ch. 1158, 68 Stat. 1024, provided that: "If any part of Title 13, United States Code, as set in section 1 of this Act, is held invalid, the remainder of such title shall not be affected thereby."

LEGISLATIVE CONSTRUCTION

Section 5 of act Aug. 31, 1954, ch. 1158, 68 Stat. 1024, provided that: "No inference of a legislative construction is to be drawn by reason of the chapter in Title 13, United States Code, as set out in section 1 of this Act, in which any section is placed, nor by reason of the captions or catchlines used in such title."

EFFECTIVE DATE

Section 6 of act Aug. 31, 1954, ch. 1158, 68 Stat. 1024, provided that: "The provisions of this Act shall take effect on January 1, 1955."

REPEALS

Section 7 of act Aug. 31, 1954, ch. 1158, 68 Stat. 1024, provided that: "The sections of the Acts, and the Acts or parts of Acts, enumerated in the following schedule,

are hereby repealed. Any rights or liabilities now existing under such statutes or parts thereof, and any proceedings instituted under, or growing out of, any of such statutes or parts thereof, shall not be affected by this repeal.''

CHAPTER 1—ADMINISTRATION

SUBCHAPTER I—GENERAL PROVISIONS

SUBCHAPTER II—OFFICERS AND EMPLOYEES

AMENDMENTS

1994—Pub. L. 103–430, § 2(d), Oct. 31, 1994, 108 Stat. 4394, added item 16.

1979—Pub. L. 96–52, § 1(b), Aug. 13, 1979, 93 Stat. 358, added item 15.

1976—Pub. L. 94–521, §§ 3(b), 4(b), 5(b), 6(b), Oct. 17, 1976, 90 Stat. 2459–2461, inserted reference to ''regulations'' in item 4, substituted ''Questionnaires'' for ''Schedules'' in item 5, substituted ''Information from other Federal departments and agencies; acquisition of reports from other governmental and private sources'' for ''Requests to other departments and offices for information, acquisition of reports from governmental and other sources'' in item 6, and substituted ''Authenticated transcripts or copies'' for ''Certified copies'' in item 8, respectively.

1966—Pub. L. 89–473, § 2(b), June 29, 1966, 80 Stat. 221, struck out item 14 ''Reimbursement between appropriations''. Pub. L. 89–473 was subsequently repealed by Pub. L. 97–258, § 5(b), Sept. 13, 1982, 92 Stat. 1068.

1962—Pub. L. 87–489, § 1(b), June 19, 1962, 76 Stat. 104, added item 14.

1957—Pub. L. 85–207, § 1, Aug. 28, 1957, 71 Stat. 481, inserted '', acquisition of reports from governmental and other sources'' in item 6, and added items 12, 13 and 26.

[1] Section repealed by Pub. L. 86–682 without corresponding amendment of chapter analysis.

[2] So in original. Does not conform to section catchline.

[3] Section catchline amended by Pub. L. 86–769 without corresponding amendment of chapter analysis.

SUBCHAPTER I—GENERAL PROVISIONS

§ 1. Definitions

As used in this title, unless the context requires another meaning or unless it is otherwise provided—

(1) ''Bureau'' means the Bureau of the Census;

(2) ''Secretary'' means the Secretary of Commerce; and

(3) ''respondent'' includes a corporation, company, association, firm, partnership, proprietorship, society, joint stock company, individual, or other organization or entity which reported information, or on behalf of which information was reported, in response to a questionnaire, inquiry, or other request of the Bureau.

(Aug. 31, 1954, ch. 1158, 68 Stat. 1012; Pub. L. 94–521, § 1, Oct. 17, 1976, 90 Stat. 2459.)

HISTORICAL AND REVISION NOTES

Section is new, and was inserted to eliminate the necessity for referring, throughout this title, to the Bureau of the Census, and the Secretary of Commerce, by their full designations.

AMENDMENTS

1976—Pub. L. 94–521 designated existing provisions as pars. (1) and (2), and added par. (3).

EFFECTIVE DATE OF 1976 AMENDMENT

Section 17 of Pub. L. 94–521 provided that: ''The amendments made by this Act [enacting sections 181 to 184 and 196 of this title, amending this section and sections 3 to 6, 8, 23, 141, 191, 195, 214, 221, 224, 225, and 241 of this title, and enacting provisions set out as notes under this section] shall take effect on October 1, 1976, or on the date of the enactment of this Act [Oct. 17, 1976], whichever date is later''.

SHORT TITLE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, § 1000(a)(7) [div. B, title XII, subtitle E, § 1251], Nov. 29, 1999, 113 Stat. 1536, 1501A–505, provided that: ''This subtitle [amending section 301 of this title and enacting provisions set out as notes under section 301 of this title] may be cited as the 'Proliferation Prevention Enhancement Act of 1999'.''

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–430, § 1, Oct. 31, 1994, 108 Stat. 4393, provided that: ''This Act [enacting section 16 of this title, amending sections 9 and 214 of this title and section 412 of Title 39, Postal Service, and enacting provisions set out as a note under section 16 of this title] may be cited as the 'Census Address List Improvement Act of 1994'.''

SEPARABILITY

Section 16 of Pub. L. 94–521 provided that: ''If a provision enacted by this Act [see section 17 of Pub. L. 94–521 set out above] is held invalid, all valid provisions that are severable from the invalid provision remain in effect. If a provision of this Act [Pub. L. 94–521] is held invalid in one or more of its applications, the provision remains in effect in all valid applications that are severable from the invalid application or applications.''

§ 2. Bureau of the Census

The Bureau is continued as an agency within, and under the jurisdiction of, the Department of Commerce.

(Aug. 31, 1954, ch. 1158, 68 Stat. 1012.)

HISTORICAL AND REVISION NOTES

Based on title 13, U.S.C., 1952 ed., § 1 (Mar. 6, 1902, ch. 139, § 1, 32 Stat. 51; Feb. 14, 1903, ch. 552, § 4, 32 Stat. 826;

Mar. 4, 1913, ch. 141, §1, 37 Stat. 736; June 18, 1929, ch. 28, §21, 46 Stat. 26).

Section 1 of title 13, U.S.C., 1952 ed., provided that the ''Census Office'' temporarily established in the Department of the Interior in accordance with the act of Mar. 3, 1899 (ch. 419, 30 Stat. 1014) ''is made'' a permanent office in the Department of Commerce. Such wording is no longer necessary, and the provisions, as revised in this section, merely continue the Bureau (of the Census) as an agency within, and under the jurisdiction of, the Department of Commerce.

§3. Seal

The Bureau shall have a seal containing such device as has been selected heretofore, or as the Secretary may select hereafter. A description of such seal with an impression thereof shall be filed in the office of the Secretary of State. The seal shall remain in the custody of the Secretary or such officer or employee of the Bureau as he designates, and shall be affixed to all documents authenticated by the Bureau. Judicial notice shall be taken of the seal.

(Aug. 31, 1954, ch. 1158, 68 Stat. 1012; Pub. L. 85–207, §2, Aug. 28, 1957, 71 Stat. 481; Pub. L. 94–521, §2, Oct. 17, 1976, 90 Stat. 2459.)

HISTORICAL AND REVISION NOTES

Based on acts Mar. 3, 1899, ch. 419, §31, 30 Stat. 1021; Mar. 6, 1902, ch. 139, §6, 32 Stat. 52.

Section is new to the United States Code, but is in accordance with current practice. Act Mar. 3, 1899, ch. 419, 30 Stat. 1014, which established the ''Census Office'' on a temporary basis, provided in section 31 thereof (30 Stat. 1021) for a seal for that office. The office was made permanent by act Mar. 6, 1902, ch. 139, 32 Stat. 51, and section 6 of that act (32 Stat. 52) continued in full force and effect ''for the taking of the Thirteenth and subsequent censuses'' all provisions of the act of Mar. 3, 1899, not inconsistent with the provisions of such 1902 act. Therefore, since the 1902 act contained no provisions with respect to a seal, section 31 of the 1899 act, providing for the seal, remained in force as it was not inconsistent. Section 33 of act July 2, 1909, ch. 2, 36 Stat. 10, which act (36 Stat. 1) related to the Thirteenth and subsequent decennial censuses, repealed the said act of Mar. 3, 1899, specifically, and all ''other'' laws and parts of laws inconsistent with the provisions of the 1909 act. These repealing provisions are somewhat ambiguous, but it was probably the intent of Congress, as it was the intent thereof at the time of enactment of the act of Mar. 6, 1902, referred to above, to continue in effect all provisions of the act of Mar. 3, 1899, that were not inconsistent with the act of July 2, 1909. The 1909 act contained no provisions with respect to the seal, and it accordingly follows that the provisions of section 31 of the act of Mar. 3, 1899, with respect thereto, continued in force. This is also the interpretation of the Bureau of the Census, which has continued to use a seal through the years in connection with ''certificates and attestations''.

In any event, this new section merely confirms past and present practice, and restores, if it does not preserve, statutory authority for possession and use of the seal which is a very necessary part of the operations of the Bureau. Further, the section should serve to forestall future differences of interpretation. In the past, some States have refused to recognize the seal of the Census Bureau on the ground that it was not authorized by law. In all probability, this position was taken, not as the result of a search of the Statutes at Large, which would have been a difficult project, but because provisions relating to the seal were not set out in the United States Code where they would have been readily accessible.

The language of this section follows substantially the language of section 31 of the act of Mar. 3, 1899, referred to above, but has been reworded because of jurisdictional and other changes since that time. The ''Census Office'' was transferred from the Department of the Interior to the Department of Commerce and Labor by act Feb. 14, 1903, ch. 552, §4, 32 Stat. 826. Act Mar. 4, 1913, ch. 141, §1, 37 Stat. 736, changed the name of the latter to the Department of Commerce, and created, as a separate department, the Department of Labor. It transferred a number of bureaus and agencies from the Department of Commerce to the Department of Labor, but these transfers did not affect the Bureau of the Census, which has remained under the jurisdiction of the Department of Commerce. 1950 Reorganization Plan No. 5, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, transferred all functions of all officers, employees, bureaus, and agencies of the Department of Commerce to the Secretary of Commerce, and vested power in him to delegate them or any of his other functions to any of such officers, employees, bureaus, and agencies. Therefore, in this section, ''Secretary'', and ''Secretary or such officer or employee of the Bureau as he designates'', were substituted, respectively, for two references to the Director of the Census, to conform with such Plan.

AMENDMENTS

1976—Pub. L. 94–521 substituted ''affixed to all documents authenticated by the Bureau'' for ''affixed to all certificates and attestations that may be required from the Bureau''.

1957—Pub. L. 85–207 provided for judicial recognition of the seal.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–521 effective Oct. 17, 1976, see section 17 of Pub. L. 94–521, set out as a note under section 1 of this title.

§4. Functions of Secretary; regulations; delegation

The Secretary shall perform the functions and duties imposed upon him by this title, may issue such rules and regulations as he deems necessary to carry out such functions and duties, and may delegate the performance of such functions and duties and the authority to issue such rules and regulations to such officers and employees of the Department of Commerce as he may designate.

(Aug. 31, 1954, ch. 1158, 68 Stat. 1013; Pub. L. 94–521, §3(a), Oct. 17, 1976, 90 Stat. 2459.)

HISTORICAL AND REVISION NOTES

Section is new, and was inserted to conform with 1950 Reorganization Plan No. 5, effective May 24, 1950, §§1, 2, 15 F.R. 3174, 64 Stat. 1263, which is set out as a note under section 591 of title 5, U. S. C., 1952 ed., Executive Departments and Government Officers and Employees [now set out in the Appendix to Title 5, Government Organization and Employees]. That plan transferred all functions (with a few exceptions not applicable to the Census Bureau) of all agencies, officers and employees of the Department of Commerce to the Secretary of Commerce, and vested power in him to delegate the functions so transferred, or any of his other functions, to such agencies, officers or employees within the Department as he designates.

See, also, section 253 of title 13, U.S.C., 1952 ed., which provided for delegation of functions in connection with the quinquennial censuses of governments, and authorized the Secretary to promulgate rules and regulations with respect to such censuses. That section has been omitted from this revised title, as the provision thereof for delegation of functions is covered by this section, and the provision thereof which related to rules and regulations is covered by section 22 of title 1, U.S.C., 1952 ed., General Provisions.

Because of the transfer effected by 1950 Reorganization Plan No. 5, referred to above, sections of title 13, U.S.C., 1952 ed., which prescribed functions of the Bureau of the Census, the Census Office, or the Director of the Census, have, in this revised title, been changed to refer to the Secretary.

AMENDMENTS

1976—Pub. L. 94–521 inserted ''regulations;'' in section catchline, authorized the Secretary to issue such rules and regulations as he deems necessary to carry out the functions and duties imposed upon him by this title, authorized delegation of authority to issue such rules and regulations to officers and employees of the Department of Commerce, and struck out a provision which allowed delegation of performance of such functions and duties to bureaus and agencies of the Department of Commerce.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–521 effective Oct. 17, 1976, see section 17 of Pub. L. 94–521, set out as a note under section 1 of this title.

§ 5. Questionnaires; number, form, and scope of inquiries

The Secretary shall prepare questionnaires, and shall determine the inquiries, and the number, form, and subdivisions thereof, for the statistics, surveys, and censuses provided for in this title.

(Aug. 31, 1954, ch. 1158, 68 Stat. 1013; Pub. L. 94–521, § 4(a), Oct. 17, 1976, 90 Stat. 2459.)

HISTORICAL AND REVISION NOTES

Based on title 13, U.S.C., 1952 ed., §§ 82, 111, 123, 204, 216, 251, and section 1442 of title 42, U.S.C., 1952 ed., The Public Health and Welfare (Mar. 6, 1902, ch. 139, § 7, 32 Stat. 52; June 7, 1906, ch. 3048, 34 Stat. 218; Aug. 7, 1916, ch. 274, § 2, 39 Stat. 437; June 18, 1929, ch. 28, §§ 3, 4, 16, 46 Stat. 21, 22, 25; 1939 Reorganization Plan No. II, § 4(e), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1431; 1940 Reorganization Plan No. III, § 3, eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1232; June 25, 1947, ch. 124, 61 Stat. 163; June 19, 1948, ch. 502, § 3, 62 Stat. 479; July 15, 1949, ch. 338, title VI, § 607, 63 Stat. 441; Sept. 7, 1950, ch. 910, §§ 1, 4, 64 Stat. 784, 785; July 16, 1952, ch. 912, 66 Stat. 736).

Section consolidates section 82 of title 13, U.S.C., 1952 ed., which related to statistics on cottonseed, oilseeds, nuts and kernels, fats, oils, and greases, with part of the second sentence of section 111 of such title, which section related to miscellaneous statistics; with the first sentence of section 123 of such title, which section related to censuses of manufacturers, mineral industries, and other businesses; with the second sentence of section 204 of such title, which section related to censuses of population, agriculture, irrigation, drainage, etc.; with the third sentence of section 216 of such title, which section related to censuses of agriculture; with that part of subsection (b) of section 1442 of title 42, U.S.C., 1952 ed., which made such sections 204 and 216 applicable to the censuses of housing; and with part of section 251(b) of such title relating to censuses of governments.

Sections 82, 123 and 204 of title 13, U.S.C., 1952 ed., provided that the inquiries, etc., should be determined by the Director of the Census, with the approval of the Secretary of Commerce. Section 111 thereof provided that the Director of the Census should prepare the schedules, etc., and sections 216 and 251(b) thereof (the former amended in 1952, the latter enacted in 1950) provided that the inquiries, etc., should be determined by the Secretary of Commerce. This consolidated section vests such duties in the Secretary of Commerce, which is in conformity not only with such sections 216 and 251(b), but also with 1950 Reorganization Plan No. 5, §§ 1, 2, effective May 24, 1950, 15 F.R. 3174, 64 Stat. 1263. See Revision Note to section 4 of this title.

Changes were made in phraseology.

For remainder of sections 111, 123, 204, 216, and 251 of title 13, U.S.C., 1952 ed., and of section 1442 of title 42, U.S.C., 1952 ed. (which has been transferred in its entirety to this revised title), see Distribution Table.

AMENDMENTS

1976—Pub. L. 94–521 substituted ''Questionnaires'' for ''Schedules'' in section catchline and in text.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–521 effective Oct. 17, 1976, see section 17 of Pub. L. 94–521, set out as a note under section 1 of this title.

RESTRICTION ON COLLECTION OF CENSUS DATA ON RACE

Pub. L. 110–161, div. B, title I, Dec. 26, 2007, 121 Stat. 1887, provided in part: ''That none of the funds provided in this or any other Act for any fiscal year may be used for the collection of census data on race identification that does not include 'some other race' as a category.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 109–108, title II, Nov. 22, 2005, 119 Stat. 2308.

Pub. L. 108–447, div. B, title II, Dec. 8, 2004, 118 Stat. 2876.

§ 6. Information from other Federal departments and agencies; acquisition of reports from other governmental and private sources

(a) The Secretary, whenever he considers it advisable, may call upon any other department, agency, or establishment of the Federal Government, or of the government of the District of Columbia, for information pertinent to the work provided for in this title.

(b) The Secretary may acquire, by purchase or otherwise, from States, counties, cities, or other units of government, or their instrumentalities, or from private persons and agencies, such copies of records, reports, and other material as may be required for the efficient and economical conduct of the censuses and surveys provided for in this title.

(c) To the maximum extent possible and consistent with the kind, timeliness, quality and scope of the statistics required, the Secretary shall acquire and use information available from any source referred to in subsection (a) or (b) of this section instead of conducting direct inquiries.

(Aug. 31, 1954, ch. 1158, 68 Stat. 1013; Pub. L. 85–207, § 3, Aug. 28, 1957, 71 Stat. 481; Pub. L. 94–521, § 5(a), Oct. 17, 1976, 90 Stat. 2460.)

HISTORICAL AND REVISION NOTES

Based on title 13, U.S.C., 1952 ed., §§ 122, 215, 252, and section 1442 of title 42, U.S.C., 1952 ed., The Public Health and Welfare (June 18, 1929, ch. 28, § 15, 46 Stat. 25; June 19, 1948, ch. 502, § 2, 62 Stat. 479; July 15, 1949, ch. 338, title VI, § 607, 63 Stat. 441; Sept. 7, 1950, ch. 910, § 1, 64 Stat. 784).

Section consolidates section 215 of title 13, U.S.C., 1952 ed., with those parts of sections 122 and 252 of such title which respectively made such section 215 applicable to the quinquennial censuses of manufacturers and the mineral industries and other businesses, and governments, and with that part of subsection (b) of section 1442 of title 42, U.S.C., 1952 ed., which made such section 215 applicable to the decennial censuses of housing (see subchapters I, II, and III of chapter 5 of this title). As originally enacted in 1929, such section 215 had related only to the decennial censuses of population, agriculture, etc., the provisions for which are continued in subchapter II of chapter 5 of this title.

The provisions, as revised in this section, relate, not only to the censuses referred to above, but also, to all other investigations provided for in this title. This was probably the Congressional intent.

Words in section 215 of title 13, U.S.C., 1952 ed., ''on request of the Director of the Census'', were omitted since all functions under this title are vested primarily in the Secretary (of Commerce), in view of 1950 Reorganization Plan No. 5, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263. See Revision Note to section 4 of this title.

Changes were made in phraseology.

For remainder of sections 122 and 252 of title 13, U.S.C., 1952 ed., and of section 1442 of title 42, U.S.C., 1952 ed. (which has been transferred in its entirety to this revised title), see Distribution Table.

AMENDMENTS

1976—Pub. L. 94–521 substituted ''Information from other Federal departments and agencies; acquisition of reports from other governmental and private sources'' for ''Requests to other departments and offices for information, acquisition of reports from governmental and other sources'' in section catchline.

Subsec. (a). Pub. L. 94–521 substituted ''considers'' for ''deems'', and ''agency, or establishment of the Federal Government, or of the government of the District of Columbia'' for ''or office of the Government''.

Subsec. (c). Pub. L. 94–521 added subsec. (c).

1957—Pub. L. 85–207 inserted '', acquisition of reports from governmental and other sources'' in section catchline, designated existing provisions as subsec. (a), and added subsec. (b).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–521 effective Oct. 17, 1976, see section 17 of Pub. L. 94–521, set out as a note under section 1 of this title.

§7. Printing; requisitions upon Public Printer; publication of bulletins and reports

The Secretary may make requisition upon the Public Printer for miscellaneous printing necessary to carry out the provisions of this title. He may further have printed by the Public Printer, in such editions as he deems necessary, preliminary and other census bulletins, and final reports of the results of the several investigations authorized by this title, and may publish and distribute such bulletins and reports.

(Aug. 31, 1954, ch. 1158, 68 Stat. 1013.)

HISTORICAL AND REVISION NOTES

Based on title 13, U.S.C., 1952 ed., §213, and section 1442 of title 42, U.S.C., 1952 ed., The Public Health and Welfare (June 18, 1929, ch. 28, §13, 46 Stat. 25; July 15, 1949, ch. 338, title VI, §607, 63 Stat. 441).

Section consolidates section 213 of title 13, U.S.C., 1952 ed., with that part of subsection (b) of section 1442 of title 42, U.S.C., 1952 ed., which made such section 213 applicable to the censuses of housing.

The enumeration in section 213 of title 13, U.S.C. 1952 ed., of the types of printing (''Blanks, schedules, circulars, pamphlets, envelopes, work sheets'') was omitted as unnecessary and covered by the words ''miscellaneous printing''.

The provisions have been reworded to make it clear that they relate to all statistical and census operations under this title, and changes were made in phraseology.

For remainder of section 1442 of title 42, U.S.C., 1952 ed. (which section has been transferred in its entirety to this revised title), see Distribution Table.

§8. Authenticated transcripts or copies of certain returns; other data; restriction on use; disposition of fees received

(a) The Secretary may, upon written request, furnish to any respondent, or to the heir, successor, or authorized agent of such respondent, authenticated transcripts or copies of reports (or portions thereof) containing information furnished by, or on behalf of, such respondent in connection with the surveys and census provided for in this title, upon payment of the actual or estimated cost of searching the records and furnishing such transcripts or copies.

(b) Subject to the limitations contained in sections 6(c) and 9 of this title, the Secretary may furnish copies of tabulations and other statistical materials which do not disclose the information reported by, or on behalf of, any particular respondent, and may make special statistical compilations and surveys, for departments, agencies, and establishments of the Federal Government, the government of the District of Columbia, the government of any possession or area (including political subdivisions thereof) referred to in section 191(a) of this title, State or local agencies, or other public and private persons and agencies, upon payment of the actual or estimated cost of such work. In the case of nonprofit agencies or organizations, the Secretary may engage in joint statistical projects, the purpose of which are otherwise authorized by law, but only if the cost of such projects are shared equitably, as determined by the Secretary.

(c) In no case shall information furnished under this section be used to the detriment of any respondent or other person to whom such information relates, except in the prosecution of alleged violations of this title.

(d) All moneys received in payment for work or services enumerated under this section shall be deposited in a separate account which may be used to pay directly the costs of such work or services, to repay appropriations which initially bore all or part of such costs, or to refund excess sums when necessary.

(Aug. 31, 1954, ch. 1158, 68 Stat. 1013; Pub. L. 85–207, §4, Aug. 28, 1957, 71 Stat. 481; Pub. L. 94–521, §6(a), Oct. 17, 1976, 90 Stat. 2460.)

HISTORICAL AND REVISION NOTES

Based on title 13, U.S.C., 1952 ed., §218, and section 1442 of title 42, U.S.C., 1952 ed., The Public Health and Welfare (June 18, 1929, ch. 28, §18, 46 Stat. 25; July 15, 1949, ch. 338, title VI, §607, 63 Stat. 441).

Section consolidates section 218 of title 13, U.S.C., 1952 ed., with that part of subsection (b) of section 1442 of title 42, U.S.C., 1952 ed., which made such section 218 applicable to the censuses of housing. For remainder of such section 1442 of title 42 (which has been transferred in its entirety to this revised title), see Distribution Table.

References to the Secretary, meaning the Secretary of Commerce, were substituted for references to the Director of the Census, to conform with 1950 Reorganization Plan No. 5, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263. See Revision Note to section 4 of this title. For the same reason, a reference in section 218 of title 13, U.S.C., 1952 ed., to the Bureau of the Census was changed, in subsection (e) of this revised section to ''Department of Commerce or any bureau or agency thereof''.

Changes were made in phraseology and arrangement.

AMENDMENTS

1976—Pub. L. 94–521 substituted ''Authenticated transcripts or copies'' for ''Certified copies'' in section catchline.

Subsec. (a). Pub. L. 94–521 substituted provision that the Secretary may furnish to any respondent, or the successor or authorized agent of such respondent, transcripts or copies of reports containing information furnished in connection with the surveys and census, upon payment of the necessary costs, for provision that authorized the Secretary, in his discretion, to furnish the Governors of States and Territories, courts of record, and individuals, data for genealogical and other proper purposes, from the population, agriculture, and housing schedules prepared under the authority of subchapter II of chapter 5 of this title, upon payment of the necessary costs, plus one dollar for supplying a certificate.

Subsec. (b). Pub. L. 94–521 inserted provision subjecting the Secretary to the limitations contained in sections 6(c) and 9 of this title, when furnishing statistical materials under this section, substituted ''copies of tabulations and other statistical materials'' for ''transcripts or copies of tables and other census records'', inserted provision that materials furnished under this section may not disclose information reported by, or on behalf of, a particular respondent, and substituted a provision enumerating the public and private establishments and individuals, on behalf of whom, special statistical compilations may be conducted for provision that such compilations may be conducted on behalf of State or local officials, private concerns, or individuals.

Subsec. (c). Pub. L. 94–521 struck out ''the authority of'' after ''furnished under'', substituted ''any respondent or other person'' for ''the persons'', and inserted ''except in the prosecution of alleged violations of this title'' after ''relates,''.

1957—Subsec. (b). Pub. L. 85–207, § 4(a), inserted sentence at end respecting engagement in joint statistical projects.

Subsec. (d). Pub. L. 85–207, § 4(b), required the deposit in a separate account of moneys received in payment for work or services, previously credited to an appropriation for collecting statistics, and permitted certain uses of such account.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–521 effective Oct. 17, 1976, see section 17 of Pub. L. 94–521, set out as a note under section 1 of this title.

§ 9. Information as confidential; exception

(a) Neither the Secretary, nor any other officer or employee of the Department of Commerce or bureau or agency thereof, or local government census liaison, may, except as provided in section 8 or 16 or chapter 10 of this title or section 210 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998 or section 2(f) of the Census of Agriculture Act of 1997—

(1) use the information furnished under the provisions of this title for any purpose other than the statistical purposes for which it is supplied; or

(2) make any publication whereby the data furnished by any particular establishment or individual under this title can be identified; or

(3) permit anyone other than the sworn officers and employees of the Department or bureau or agency thereof to examine the individual reports.

No department, bureau, agency, officer, or employee of the Government, except the Secretary in carrying out the purposes of this title, shall require, for any reason, copies of census reports which have been retained by any such establishment or individual. Copies of census reports which have been so retained shall be immune from legal process, and shall not, without the consent of the individual or establishment concerned, be admitted as evidence or used for any purpose in any action, suit, or other judicial or administrative proceeding.

(b) The provisions of subsection (a) of this section relating to the confidential treatment of data for particular individuals and establishments, shall not apply to the censuses of governments provided for by subchapter III of chapter 5 of this title, nor to interim current data provided for by subchapter IV of chapter 5 of this title as to the subjects covered by censuses of governments, with respect to any information obtained therefor that is compiled from, or customarily provided in, public records.

(Aug. 31, 1954, ch. 1158, 68 Stat. 1013; Pub. L. 87–813, Oct. 15, 1962, 76 Stat. 922; Pub. L. 101–533, § 5(b)(2), Nov. 7, 1990, 104 Stat. 2348; Pub. L. 103–430, § 2(b), Oct. 31, 1994, 108 Stat. 4394; Pub. L. 105–113, § 4(a)(1), Nov. 21, 1997, 111 Stat. 2276; Pub. L. 105–119, title II, § 210(k), Nov. 26, 1997, 111 Stat. 2487.)

HISTORICAL AND REVISION NOTES

Based on title 13, U.S.C., 1952 ed., §§ 73, 83, 122, 208, 211, 252, and section 1442 of title 42, U.S.C., 1952 ed., The Public Health and Welfare (Aug. 7, 1916, ch. 274, § 3, 39 Stat. 437; Apr. 2, 1924, ch. 80, § 3, 43 Stat. 31; June 18, 1929, ch. 28, §§ 8, 11, 21, 46 Stat. 23, 25, 26; July 25, 1947, ch. 331, 61 Stat. 457; June 19, 1948, ch. 502, § 2, 62 Stat. 479; July 15, 1949, ch. 338, title VI, § 607, 63 Stat. 441; Sept. 7, 1950, ch. 910, § 2, 64 Stat. 784).

Section consolidates parts of sections 73 and 83 of title 13, U.S.C., 1952 ed., part of section 208 of such title, section 211 of such title, that part of section 122 of such title which made such sections 208 and 211 applicable to the quinquennial censuses of manufacturers, the mineral industries, and other businesses (see subchapter I of chapter 5 of this revised title), that part of section 252 of such title which made such sections 208 and 211 applicable to the quinquennial censuses of governments (see subchapter III of chapter 5 of this revised title), the second proviso in such section 252, and that part of subsection (b) of section 1442 of title 42, U.S.C., 1952 ed., which made such sections 208 and 211 applicable to the decennial censuses of housing (see subchapter II of chapter 5 of this revised title).

Words ''except as provided in section 8 of this title'' were inserted in opening phrase of subsection (a) for the purpose of clarity.

References to the Secretary, the Department of Commerce and bureaus and agencies thereof, and to other officers and employees of such Department, bureaus or agencies, were substituted for references to the Director of the Census, the ''Census Office'', and the enumeration (in section 208 of title 13, U.S.C., 1952 ed.) of certain types of employees, for the purpose of completeness, and to conform with 1950 Reorganization Plan No. 5, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263. See Revision Note to section 4 of this title.

The penal provisions of sections 73, 83, and 208 of title 13, U.S.C., 1952 ed., prescribing penalties for wrongful disclosure of information, are set out in section 214 of this title.

Changes were made in phraseology.

For remainder of sections 122, 208, and 252 of title 13, U.S.C., 1952 ed., and of section 1442 of title 42, U.S.C., 1952 ed. (which section has been transferred in its entirety to this revised title), see Distribution Table.

REFERENCES IN TEXT

Section 210 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998, referred to in subsec. (a), is section 210 of Pub. L. 105–119, title II, Nov. 26, 1997, 111 Stat.

2483, which amended this section and enacted provisions set out as a note under section 141 of this title.

Section 2(f) of the Census of Agriculture Act of 1997, referred to in subsec. (a), is classified to section 2204g(f) of Title 7, Agriculture.

AMENDMENTS

1997—Subsec. (a). Pub. L. 105–119, which directed the substitution, in introductory provisions, of ''of this title or section 210 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998—'' for ''of this title—'', was executed by substituting ''of this title or section 210 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998'' for ''of this title'' to reflect the probable intent of Congress and the amendment by Pub. L. 105–113. See below.

Pub. L. 105–113 inserted ''or section 2(f) of the Census of Agriculture Act of 1997'' after ''chapter 10 of this title''.

1994—Subsec. (a). Pub. L. 103–430 inserted ''or local government census liaison,'' after ''thereof,'' and ''or 16'' after ''section 8''.

1990—Subsec. (a). Pub. L. 101–533 inserted ''or chapter 10'' after ''section 8''.

1962—Subsec. (a). Pub. L. 87–813 inserted sentences stating that no department, bureau, agency, officer, or employee of the Government, except the Secretary in carrying out the purposes of this title, shall require, for any reason, copies of census reports which have been retained by any such establishment or individual, and providing that copies of census reports which have been so retained shall be immune from legal process, and shall not, without the consent of the individual or establishment, be admitted as evidence or used for any purpose in any action, suit or other judicial or administrative proceeding.

[§ 10. Repealed. Pub. L. 86–682, § 12(a), Sept. 2, 1960, 74 Stat. 708, eff. Sept. 1, 1960]

Section, act Aug. 31, 1954, ch. 1158, § 1, 68 Stat. 1014, related to free transmittal of official mail in census matters.

§ 11. Authorization of appropriations

There is authorized to be appropriated, out of the Treasury of the United States, such sums as may be necessary to carry out all provisions of this title.

(Aug. 31, 1954, ch. 1158, 68 Stat. 1014.)

HISTORICAL AND REVISION NOTES

Section is new, and has been inserted to supply the customary authorization of appropriations necessary in carrying out any of the provisions of this title.

BUREAU OF THE CENSUS WORKING CAPITAL FUND

Pub. L. 104–208, div. A, title I, § 101(a) [title II, § 210], Sept. 30, 1996, 110 Stat. 3009, 3009–41, provided that: ''There is hereby established the Bureau of the Census Working Capital Fund, which shall be available without fiscal year limitation, for expenses and equipment necessary for the maintenance and operation of such services and projects as the Director of the Census Bureau determines may be performed more advantageously when centralized: *Provided*, That such central services shall, to the fullest extent practicable, be used to make unnecessary the maintenance of separate like services in the divisions and offices of the Bureau: *Provided further*, That a separate schedule of expenditures and reimbursements, and a statement of the current assets and liabilities of the Working Capital Fund as of the close of the last completed fiscal year, shall be prepared each year: *Provided further*, That notwithstanding 31 U.S.C. 3302, the Working Capital Fund may be credited with advances and reimbursements from applicable appropriations of the Bureau and from funds of other agencies or entities for services furnished pursuant to law: *Provided further*, That any inventories, equipment, and other assets pertaining to the services to be provided by such funds, either on hand or on order, less the related liabilities or unpaid obligations, and any appropriations made hereafter for the purpose of providing capital, shall be used to capitalize the Working Capital Fund: *Provided further*, That the Working Capital Fund shall provide for centralized services at rates which will return in full all expenses of operation, including depreciation of fund plant and equipment, amortization of automated data processing software and hardware systems, and an amount necessary to maintain a reasonable operating reserve as determined by the Director.''

§ 12. Mechanical and electronic development

The Secretary is authorized to have conducted mechanical and electronic development work as he determines is needed to further the functions and duties of carrying out the purposes of this title and may enter into such developmental contracts as he may determine to be in the best interest of the Government.

(Added Pub. L. 85–207, § 5, Aug. 28, 1957, 71 Stat. 481.)

§ 13. Procurement of professional services

The Secretary shall have authority to contract with educational and other research organizations for the preparation of monographs and other reports and materials of a similar nature.

(Added Pub. L. 85–207, § 5, Aug. 28, 1957, 71 Stat. 481.)

[§ 14. Repealed. Pub. L. 89–473, § 2(a), June 29, 1966, 80 Stat. 221]

Section, added Pub. L. 87–489, § 1(a), June 19, 1962, 76 Stat. 104, provided for reimbursement between appropriations. See section 1534 of Title 31, Money and Finance.

REPEALS

Pub. L. 89–473, June 29, 1966, 80 Stat. 221, which repealed this section and struck out item 14 in the analysis of sections comprising this chapter, was itself repealed by Pub. L. 97–258, § 5(b), Sept. 13, 1982, 96 Stat. 1068.

§ 15. Leases for 1980 decennial census

The 15 percent limitation contained in section 322[1] of the Act of June 30, 1932 (47 Stat. 412) shall not apply to leases entered into by the Secretary for the purpose of carrying out the 1980 decennial census, but no lease may be entered into for such purpose at a rental in excess of 105 percent of the appraised fair annual rental of the leased premises, or a proportionate part of the appraised fair annual rental in the case of a lease for less than a year.

(Added Pub. L. 96–52, § 1(a), Aug. 13, 1979, 93 Stat. 358; amended Pub. L. 108–178, § 4(c), Dec. 15, 2003, 117 Stat. 2641.)

REFERENCES IN TEXT

Section 322 of the Act of June 30, 1932 (47 Stat. 412), referred to in text, was repealed by Pub. L. 100–678, § 7, Nov. 17, 1988, 102 Stat. 4052.

[1] See References in Text note below.

AMENDMENTS

2003—Pub. L. 108–178 struck out ''; 40 U.S.C. 278a'' after ''47 Stat. 412''.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–178 effective Aug. 21, 2002, see section 5 of Pub. L. 108–178, set out as a note under section 5334 of Title 5, Government Organization and Employees.

§ 16. Address information reviewed by States and local governments

(a) The Secretary, to assist efforts to ensure the accuracy of censuses and surveys under this title, shall—

(1) publish standards defining the content and structure of address information which States and local units of general purpose government may submit to the Secretary to be used in developing a national address list;

(2)(A) develop and publish a timetable for the Bureau to receive, review, and respond to submissions of information under paragraph (1) before the decennial census date; and

(B) provide for a response by the Bureau with respect to such submissions in which the Bureau specifies its determinations regarding such information and the reasons for such determinations; and

(3) be subject to the review process developed under section 3 of the Census Address List Improvement Act of 1994 relating to responses pursuant to paragraph (2).

(b)(1) The Secretary—

(A) shall provide officials who are designated as census liaisons by a local unit of general purpose government with access to census address information for the purpose of verifying the accuracy of the address information of the Bureau for census and survey purposes; and

(B) together with such access, should provide an explanation of duties and obligations under this title.

(2) Access under paragraph (1) shall be limited to address information concerning addresses within the local unit of general purpose government represented by the census liaison or an adjacent local unit of general purpose government.

(3) The Bureau should respond to each recommendation made by a census liaison concerning the accuracy of address information, including the determination (and reasons therefor) of the Bureau regarding each such recommendation.

(4) For the purposes of paragraph (1), in a case in which a local unit of general purpose government is within another local unit of general purpose government and is not independent of the enclosing unit, the census liaison shall be designated by the local unit of general purpose government which is within the enclosing local unit of general purpose government.

(5) A census liaison may not use information made available under paragraph (1) for any purpose other than the purpose specified in paragraph (1).

(c) For the purposes of this section—

(1) the term ''local unit of general purpose government'' has the meaning given such term by section 184(1) of this title; and

(2) the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands, and any other territory or possession of the United States.

(Added Pub. L. 103–430, § 2(a), Oct. 31, 1994, 108 Stat. 4393.)

REFERENCES IN TEXT

Section 3 of the Census Address List Improvement Act of 1994, referred to in subsec. (a)(3), is section 3 of Pub. L. 103–430, set out below.

DEVELOPMENT OF APPEALS PROCESS BY ADMINISTRATOR OF OFFICE OF INFORMATION AND REGULATORY AFFAIRS

Section 3 of Pub. L. 103–430 provided that: ''The Administrator of the Office of Information and Regulatory Affairs, acting through the Chief Statistician and in consultation with the Bureau of the Census, shall develop an appeals process for those States and local units of general purpose government which desire to appeal determinations of the Bureau of the Census pursuant to section 16(a)(2) or (b)(3) of title 13, United States Code. Appeals under such process shall be resolved before the decennial census date. The Chief Statistician shall publish the proposed appeals process for a period of public comment before finalizing such process.''

SUBCHAPTER II—OFFICERS AND EMPLOYEES

§ 21. Director of the Census; duties

The Bureau shall be headed by a Director of the Census, appointed by the President, by and with the advice and consent of the Senate. The Director shall perform such duties as may be imposed upon him by law, regulations, or orders of the Secretary.

(Aug. 31, 1954, ch. 1158, 68 Stat. 1014.)

HISTORICAL AND REVISION NOTES

Based on title 13, U.S.C., 1952 ed., § 2 (Mar. 6, 1902, ch. 139, § 3, 32 Stat. 51; June 18, 1929, ch. 28, § 21, 46 Stat. 26). The provision of section 2 of title 13, U.S.C., 1952 ed., which imposed upon the Director the duty to superintend and direct the taking of censuses of the United States was omitted in view of 1950 Reorganization Plan No. 5, effective May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, which transferred all functions of all officers, employees, bureaus, and agencies of the Department of Commerce to the Secretary of Commerce, and this title, as revised, vests such duty in the Secretary. However, under section 4 of this title, he may delegate his functions hereunder.

''Bureau'' was substituted for ''permanent Census Office''. See Revision Note to section 2 of this title.

At the end of this section, references to regulations, and to orders of the Secretary, were added after ''law'' in view of the changes effected by 1950 Reorganization Plan No. 5, referred to above.

Changes were made in phraseology.

§ 22. Qualifications of permanent personnel

All permanent officers and employees of the Bureau shall be citizens of the United States.

(Aug. 31, 1954, ch. 1158, 68 Stat. 1014; Pub. L. 86–769, § 1, Sept. 13, 1960, 74 Stat. 911.)

HISTORICAL AND REVISION NOTES

Based on title 13, U.S.C., 1952 ed., §§ 5, 6 (Mar. 6, 1902, ch. 139, §§ 5, 10, 32 Stat. 51, 53; June 18, 1929, ch. 28, § 21, 46 Stat. 26).

Section consolidates section 5 of title 13, U.S.C., 1952 ed., with section 6 of such title.

A reference to ''officers'' was inserted for completeness, and the word ''permanent'' was inserted before ''officers and employees'' for the purpose of clarity.

The provision in section 5 of title 13, U.S.C., 1952 ed., excepting unskilled laborers from the requirements for citizenship, was omitted as superseded and covered by the Classification Act of 1949 (5 U.S.C., 1952 ed., ch. 21).

The provision that appointments and compensation shall be subject to the Classification Act of 1949 is new but is in accordance with existing law. See chapter 21 of title 5, U.S.C., 1952 ed., Executive Departments and Government Officers and Employees.

The provision in section 5 of title 13, U.S.C., 1952 ed., giving preference in appointments to war veterans and their widows, was omitted as superseded and covered by the Veterans' Preference Act of 1944 (chapter 17 of Title 5, U.S.C., 1952 ed., Executive Departments and Government Officers and Employees).

Changes were made in phraseology.

AMENDMENTS

1960—Pub. L. 86–769 struck out references to appointment and compensation under the Civil Service laws and the Classification Act of 1949.

PROGRAM FOR EMPLOYMENT OF SPANISH-ORIGIN PERSONNEL IN BUREAU; REPORT TO CONGRESS

Pub. L. 94–311, § 6, June 16, 1976, 90 Stat. 689, required Department of Commerce to implement an affirmative action program within Bureau of the Census for employment of personnel of Spanish origin or descent and to submit a report to Congress within one year of June 16, 1976, on progress of such program.

§ 23. Additional officers and employees

(a) The Secretary may establish, at rates of compensation to be fixed by him without regard to the Classification Act of 1949, as many temporary positions as may be necessary to meet the requirements of the work provided for by law. Bureau employees who are transferred to any such temporary positions shall not lose their permanent civil service status by reason of the transfer. The Secretary may make appointments to such temporary positions in conformity with the civil service laws and rules.

(b) In addition to employees of the Department of Commerce, employees of other departments and independent offices of the Government may, with the consent of the head of the respective department or office, be employed and compensated for field work in connection with the work provided for by law without regard to section 301 of the Dual Compensation Act.

(c) The Secretary may utilize temporary staff, including employees of Federal, State, or local agencies or instrumentalities, and employees of private organizations to assist the Bureau in performing the work authorized by this title, but only if such temporary staff is sworn to observe the limitations imposed by section 9 of this title.

(Aug. 31, 1954, ch. 1158, 68 Stat. 1014; Pub. L. 86–769, § 2, Sept. 13, 1960, 74 Stat. 911; Pub. L. 88–448, title IV, § 401(p), Aug. 19, 1964, 78 Stat. 492; Pub. L. 94–521, § 12(b), Oct. 17, 1976, 90 Stat. 2465.)

HISTORICAL AND REVISION NOTES

Based on title 13, U.S.C., 1952 ed., §§ 203, 216, and section 1442 of title 42, U.S.C., 1952 ed., The Public Health and Welfare (June 18, 1929, ch. 28, §§ 3, 16, 46 Stat. 21, 25; July 6, 1949, ch. 298, §§ 1, 2, 63 Stat. 406; July 15, 1949, ch. 338, title VI, § 607, 63 Stat. 441; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; July 16, 1952, ch. 912, 66 Stat. 736).

Section consolidates parts of sections 203 and 216 of title 13, U.S.C., 1952 ed., with that part of subsection (b) of section 1442 of title 42, U.S.C., 1952 ed., which made such sections 203 and 216 applicable to the censuses of housing.

Section 122 of title 13, U.S.C., 1952 ed., which related to quinquennial censuses of manufacturers, the mineral industries, transportation, and other businesses (see subchapter I of chapter 5 of this revised title), and section 252 of title 13, U.S.C., 1952 ed., which related to quinquennial censuses of governments (see subchapter III of chapter 5 of this title), made section 203 of such title applicable to those censuses. However, since the particular provisions of such section 203 that have been carried into this revised section apparently related, as supplemented by section 1442(b) of title 42, U.S.C., 1952 ed., to the decennial censuses provided for in sections 201 et seq. of such title, and in such section 1442 of title 42 (see subchapter II of chapter 5 of this revised title), and apparently could have no relevancy to the quinquennial censuses referred to above, this revised section relates only to such decennial censuses.

In subsection (a), ''Departmental Service'' was substituted for ''District of Columbia'', since the Bureau of the Census now has its headquarters in Maryland, and not in the District of Columbia.

In this section, a reference to the Bureau of the Census was changed to a reference to the Department of Commerce, and references to the Director of the Census were changed in all but one case to references to the Secretary (of Commerce) to conform with 1950 Reorganization Plan No. 5, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263. See Revision Note to section 4 of this title. The provision of section 203 of title 13, U.S.C., 1952 ed., that appointments under the particular provisions thereof that have been carried into subsection (a) of this revised section should be made upon the recommendation of the Director of the Census, have been omitted from such subsection (a) for the same reason. Further, words ''or to whatever other officer is designated by the Secretary to take the census provided for in sections 141 and 142 of this title'' were inserted after ''Director of the Census'' in par. (1) of subsection (a), to conform with such 1950 Reorganization Plan.

The first paragraph of section 203 of title 13, U.S.C., 1952 ed., which provided for the employment of two assistant directors for each decennial census period, was omitted as obsolete and superseded, in view of section 122 of such title, which made such section 203 applicable to the quinquennial censuses of manufactures and other businesses, and to surveys (see subchapter IV of chapter 5 of this title), thus rendering such first paragraph ineffective and meaningless. See also section 121(b) of title 13, U.S.C., 1952 ed.

The third proviso in the second paragraph of section 203 of title 13, U.S.C., 1952 ed., giving preference in appointments to disabled war veterans, their widows, and, under certain circumstances, to their wives, was omitted as superseded and covered by the Veterans' Preference Act of 1944 (chapter 17 of title 5, U.S.C., 1952 ed., Executive Departments and Government Officers and Employees).

Changes were made in phraseology and arrangement.

Remainder of section 203 of title 13, U.S.C., 1952 ed., is incorporated in this subchapter, and for remainder of section 216 thereof, and of section 1442 of title 42, U.S.C., 1952 ed. (which has been transferred in its entirety to this revised title), see Distribution Table.

REFERENCES IN TEXT

The Classification Act of 1949, referred to in subsec. (a), is act Oct. 28, 1949, ch. 782, 63 Stat. 954, as amended, which was repealed by Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 632, and reenacted by the first section thereof as chapter 51 and subchapter III of chapter 53 of Title 5, Government Organization and Employees.

The civil service laws, referred to in subsec. (a), are set forth in Title 5. See, particularly, section 3301 et seq. of Title 5.

Section 301 of the Dual Compensation Act, referred to in subsec. (b), which was classified to section 3105 of former Title 5, Executive Departments and Government Officers and Employees, was repealed by Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 632, and reenacted by the first section thereof as section 5533 of Title 5.

AMENDMENTS

1976—Subsec. (c). Pub. L. 94–521 added subsec. (c).

1964—Subsec. (b). Pub. L. 88–448 inserted ''without regard to section 301 of the Dual Compensation Act''.

1960—Subsec. (a). Pub. L. 86–769 substituted ''The Secretary may establish, at rates of compensation to be fixed by him without regard to the Classification Act of 1949, as many temporary positions as may be necessary to meet the requirements of the work provided for by law. Bureau employees who are transferred to any such temporary positions shall not lose their permanent civil service status by reason of the transfer. The Secretary may make appointments to such temporary positions in conformity with the civil service laws and rules'' for ''The Secretary may appoint, without regard to the Classification Act of 1949, at rates of compensation to be fixed by him, as many temporary employees in the Departmental Service as may be necessary to meet the requirements of the work provided for in this title. Census employees who are transferred to any such temporary positions shall not lose their permanent Civil Service status by reason of the transfer. The Secretary shall make all such temporary appointments in conformity with the Civil Service laws and rules''.

Subsec. (b). Pub. L. 86–769 substituted ''by law'' for ''in this title''.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–521 effective Oct. 17, 1976, see section 17 of Pub. L. 94–521, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–448 effective on first day of first month which begins later than ninetieth day following Aug. 19, 1964, see section 403 of Pub. L. 88–448.

TEMPORARY POSITIONS RELATING TO DECENNIAL CENSUSES

Pub. L. 108–447, div. B, title II, § 205, Dec. 8, 2004, 118 Stat. 2883, provided that: ''Hereafter, none of the funds made available by this or any other Act for the Department of Commerce shall be available to reimburse the Unemployment Trust Fund or any other fund or account of the Treasury to pay for any expenses authorized by section 8501 of title 5, United States Code, for services performed by individuals appointed to temporary positions within the Bureau of the Census for purposes relating to the decennial censuses of population.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 106–553, § 1(a)(2) [title II, § 204], Dec. 21, 2000, 114 Stat. 2762, 2762A–78.

Pub. L. 106–113, div. B, § 1000(a)(1) [title II, § 204], Nov. 29, 1999, 113 Stat. 1535, 1501A–31.

Pub. L. 105–277, div. A, § 101(b) [title II, § 204], Oct. 21, 1998, 112 Stat. 2681–50, 2681–86.

Pub. L. 105–119, title II, § 204, Nov. 26, 1997, 111 Stat. 2479.

Pub. L. 104–208, div. A, title I, § 101(a) [title II, § 204], Sept. 30, 1996, 110 Stat. 3009, 3009–39.

Pub. L. 104–134, title I, § 101[(a)] [title II, § 204], Apr. 26, 1996, 110 Stat. 1321, 1321–30; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.

Pub. L. 103–317, title II, § 204, Aug. 26, 1994, 108 Stat. 1749.

Pub. L. 103–121, title II, § 204, Oct. 27, 1993, 107 Stat. 1177.

Pub. L. 102–395, title II, § 204, Oct. 6, 1992, 106 Stat. 1855.

Pub. L. 102–140, title II, § 204, Oct. 28, 1991, 105 Stat. 806.

Pub. L. 101–515, title I, § 104, Nov. 5, 1990, 104 Stat. 2108.

Pub. L. 101–382, title I, § 141, Aug. 20, 1990, 104 Stat. 654, provided that:

''(a) GENERAL RULE.—The determination of whether temporary 1990 census services constitute 'Federal service' for purposes of subchapter I of chapter 85 of title 5, United States Code, shall be made under the provisions of such subchapter without regard to any provision of law not contained in such subchapter.

''(b) TEMPORARY 1990 CENSUS SERVICES.—For purposes of subsection (a), the term 'temporary 1990 census services' means services performed by individuals appointed to temporary positions within the Bureau of the Census for purposes relating to the 1990 decennial census of population (as determined under regulations determined by the Secretary of Commerce).''

Pub. L. 101–302, title II, May 25, 1990, 104 Stat. 215, provided that: ''Services performed after April 20, 1990, by individuals appointed to temporary positions within the Bureau of the Census for purposes relating to the 1990 decennial census of population shall not constitute 'Federal service' for purposes of section 8501 of title 5, United States Code.''

Pub. L. 101–86, Aug. 16, 1989, 103 Stat. 593, as amended by Pub. L. 101–293, § 1, May 17, 1990, 104 Stat. 192, provided that Federal annuitants or former members of the uniformed services who return to Government service under temporary appointments to assist in carrying out the 1990 decennial census of population would be exempt from certain provisions of Title 5, Government Organization and Employees, relating to offsets from pay and other benefits.

[Section 2 of Pub. L. 101–293 provided that amendment of Pub. L. 101–86 by Pub. L. 101–293 may not be considered to make an exemption under Pub. L. 101–86 applicable to any service performed before May 17, 1990, which was in excess of that allowable under Pub. L. 101–86 (as then in effect).]

POLICY AND PRACTICES OF BUREAU OF CENSUS REGARDING USE OF TEMPORARY STAFF; PUBLICATION

Pub. L. 97–454, § 3, Jan. 12, 1983, 96 Stat. 2494, provided that: ''Not later than 180 days after the effective date of this Act [Jan. 12, 1983], the Secretary of Commerce shall publish in the Federal Register a statement of the policy and practices of the Bureau of the Census relating to the administration of section 23(c) of title 13, United States Code. Such statement shall include a description of—

''(1) the policy of the Secretary for the use of all individuals as temporary staff pursuant to such section 23(c) to assist the Bureau of the Census in performing work authorized under such title 13;

''(2) the functions for which the Secretary, in his discretion, may appoint temporary staff to assist the Bureau in performing work authorized under such title 13;

''(3) the practice applicable to the appointment of such temporary staff in performing such work;

''(4) the requirements and penalties under such title applicable to temporary staff performing such work, together with safeguards to ensure that such temporary staff will observe the limitations imposed in section 9 of such title.''

§ 24. Special employment provisions

(a) The Secretary may utilize the services of nontemporary employees of the Bureau (by assignment, promotion, appointment, detail, or otherwise) in temporary positions established for any census, for not to exceed the period during which appropriations are available for that census. Whenever the Secretary determines that the services of an employee which have been utilized under this section are no longer required in such a temporary position, he may, without re-

gard to the provisions of any other law, return the employee to a continuing position, with rank and compensation not less than that which he held in his last permanent position in the Bureau: *Provided*, That no employee shall, by reason of his service in a temporary position under this subsection, lose the protection of any law or regulation with respect to his separation, suspension, furlough, or reduction in rank or compensation below the level held in his last permanent position in the Bureau. Service by a nontemporary employee in a temporary position under this subsection shall be creditable for step-increases (both periodic and longevity) under title VII of the Classification Act of 1949, as amended, as though it were a continuation of service in his last permanent position.

(b) As used in this title with respect to appointments or positions, ''temporary'' shall be construed to mean not in excess of one year, or not in excess of the specific period during which appropriations are available for the conduct of a particular census, whichever is longer. No employee of the Bureau who holds only a temporary appointment within the meaning of this section shall be considered as other than strictly temporary for purposes of any other provision of law relating to separations, suspensions, or reductions in rank or compensation.

(c) The enlisted men and officers of the uniformed services may be appointed and compensated for service in temporary enumerator positions for the enumeration of personnel of the uniformed services.

(d) The Secretary may fix compensation on a piece-price basis without limitation as to the amount earned per diem, and payments may be made to enumerators for the use of private automobiles on official business without regard to section 4 of the Travel Expense Act of 1949, as amended (5 U.S.C. 837), but at rates not in excess of the rates provided by that Act.

(e) The Secretary may authorize the expenditure of necessary sums for travel expenses of persons selected for appointment for attendance at training courses held by the Department of Commerce with respect to any of the work provided for by law.

(f) Notwithstanding any other provision of law prohibiting the expenditure of public money for telephone service, the Secretary, under such regulations as he shall prescribe, may authorize reimbursement for tolls or charges for telephone service from private residences or private apartments to the extent such charges are determined by the Secretary to have been incurred to facilitate the collection of information in connection with the censuses and surveys authorized by this title.

(Aug. 31, 1954, ch. 1158, 68 Stat. 1015; Pub. L. 86–769, § 3, Sept. 13, 1960, 74 Stat. 911; Pub. L. 88–535, Aug. 31, 1964, 78 Stat. 744.)

Historical and Revision Notes

Based on title 13, U.S.C., 1952 ed., §§ 111, 122, 203, 252, and section 1442 of title 42, U.S.C. 1952 ed., The Public Health and Welfare (Mar. 6, 1902, ch. 139, § 7, 32 Stat. 52; June 7, 1906, ch. 3048, 34 Stat. 218; June 18, 1929, ch. 28, § 3, 46 Stat. 21; 1939 Reorganization Plan No. II, § 4(e), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1431; 1940 Reorganization Plan No. III, § 3, eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1232; June 25, 1947, ch. 124, 61 Stat. 163; June 19, 1948, ch. 502, § 2, 62 Stat. 479; July 6, 1949, ch. 298, §§ 1, 2, 63 Stat. 406; July 15, 1949, ch. 338, title VI, § 607, 63 Stat. 441; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; Sept. 7, 1950, ch. 910, §§ 2, 4, 64 Stat. 784, 785).

Section consolidates those provisions of sections 111, 122, 203 and 252 of title 13, U.S.C., 1952 ed., which related to appointment of special personnel for census work, collection of statistics, etc., and the use of permanent employees for such purpose, with that part of subsection (b) of section 1442 of title 42, U.S.C., 1952 ed., which made such section 203 applicable to housing censuses (subchapter II of chapter 5 of this title).

The provisions have been reworded to make it clear that they relate to all collections of statistics, censuses, etc., provided for in this title.

References to the Director of the Census have been changed to references to the Secretary (of Commerce) to conform with 1950 Reorganization Plan No. 5, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263. See Revision Note to section 4 of this title.

Words ''except that such special agents shall be appointed in accordance with the civil service laws'' were omitted as obsolete and unnecessary in view of the Classification Act of 1949 (see 5 U.S.C., 1952 ed., ch. 21).

The provisions of section 203 of title 13, U.S.C., 1952 ed., relating to per diem rates of compensation for special agents, to authority to detail permanent employees and special agents to act as supervisors or enumerators, and to duties thereof, were omitted as obsolete and superseded by the Classification Act of 1949.

The provision of section 203 of title 13, U.S.C., 1952 ed., that the Director of the Census might delegate to the supervisors the authority to appoint enumerators, was omitted because all functions of the Director and other officers and employees of the Department of Commerce and its bureaus and agencies were transferred to the Secretary by 1950 Reorganization Plan No. 5, referred to above. However, section 4 of this title provides for delegation of functions by the Secretary.

Words ''on a temporary basis'' were inserted after ''appointed'' in subsection (a) for the purpose of clarity.

Changes were made in phraseology and arrangement.

Remainder of section 203 of title 13, U.S.C., 1952 ed., is incorporated in this subchapter, and for remainder of sections 111, 122 and 252 thereof, and of section 1442 of title 42, U.S.C., 1952 ed. (which has been transferred in its entirety to this revised title), see Distribution Table.

References in Text

Title VII of the Classification Act of 1949, as amended, referred to in subsec. (a), is title VII of act Oct. 28, 1949, ch. 872, 63 Stat. 967, as amended, which was classified to sections 1121 to 1123 of former Title 5, Executive Departments and Government Officers and Employees, and was repealed by Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 632, and reenacted by the first section thereof as sections 5335 and 5336 of Title 5, Government Organization and Employees.

Section 4 of the Travel Expense Act of 1949, as amended (5 U.S.C. 837), referred to in subsec. (d), was repealed by Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 632, and reenacted by the first section thereof as section 5704 of Title 5.

Amendments

1964—Subsec. (f). Pub. L. 88–535 added subsec. (f).

1960—Pub. L. 86–769 amended section generally, and among other changes, permitted the utilization of nontemporary employees in temporary service, and their return, when the Secretary so determines, to a continuing position with rank and compensation not less than that of their last permanent position, with no loss of protection of any law or regulation with respect to their separation, suspension, furlough or reduction in rank or compensation below their last permanent position, provided that service by nontemporary employees in temporary positions is creditable for step-increases

as though a continuation of their last permanent positions, defined ''temporary'', and provided for payments to enumerators for the use of private automobiles on official business.

SALARY PROTECTION FOR EMPLOYEES SUBJECT TO CLASSIFICATION ACT OF 1949

Special provisions of this section respecting utilization of nontemporary employees of the Bureau of the Census in temporary positions in connection with any census unaffected by provisions for salary protection to employees subject to Classification Act of 1949, see section 103 of Pub. L. 87–270, title I, Sept. 21, 1961, 75 Stat. 569.

§ 25. Duties of supervisors, enumerators, and other employees

(a) Each supervisor shall perform the duties imposed upon him by the Secretary in the enforcement of chapter 5 of this title in accordance with the Secretary's orders and instructions.

(b) Each enumerator or other employee detailed to serve as enumerator shall be charged with the collection in his subdivision of the facts and statistics called for on such schedules as the Secretary determines shall be used by him in connection with any census or survey provided for by chapter 5 of this title.

(Aug. 31, 1954, ch. 1158, 68 Stat. 1015; Pub. L. 88–530, Aug. 31, 1964, 78 Stat. 737.)

HISTORICAL AND REVISION NOTES

Based on title 13, U.S.C., 1952 ed., §§ 122, 205, and section 1442 of title 42, U.S.C., 1952 ed., The Public Health and Welfare (June 18, 1929, ch. 28, § 5, 46 Stat. 22; June 19, 1948, ch. 502, § 2, 62 Stat. 479; July 15, 1949, ch. 338, title VI, § 607, 63 Stat. 441).

Section consolidates section 205 of title 13, U.S.C., 1952 ed., with that part of section 122 of such title which made such section 205 applicable to the surveys provided for by section 121 of such title (see subchapter IV of chapter 5), and with that part of subsection (b) of section 1442 of title 42, U.S.C., 1952 ed., which made such section 205 applicable to the censuses of housing.

References to the Secretary, meaning the Secretary of Commerce, were substituted for references to the Director of the Census, to conform with 1950 Reorganization Plan No. 5, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263. See Revision Note to section 4 of this title.

Changes were made in phraseology and arrangement.

AMENDMENTS

1964—Subsec. (c). Pub. L. 88–530 repealed subsec. (c) which related to duties of enumerators in Bureau of the Census.

§ 26. Transportation by contract

The Secretary may contract with field employees for the rental and use within the continental limits of the United States of means of transportation, other than motorcycle, automobile, or airplane, and for the rental and use outside of the continental United States of any means of transportation, which means may be owned by the field employee. Such rental contracts shall be made without regard to section 4 of the Travel Expense Act of 1949, as amended (5 U.S.C. 837). The rentals shall be at rates equivalent to the prevailing rental rates of the locality. The rental contracts within the continental United States may be entered into only when the use by the field employee of such other means of transportation is safer, more economical, or more advantageous to the Government than use of his motorcycle, automobile, or airplane in conducting the census.

(Added Pub. L. 85–207, § 6, Aug. 28, 1957, 71 Stat. 482.)

REFERENCES IN TEXT

Section 4 of the Travel Expense Act of 1949, as amended (5 U.S.C. 837), referred to in text, was repealed by Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 632, and reenacted by the first section thereof as section 5704 of Title 5, Government Organization and Employees.

CHAPTER 3—COLLECTION AND PUBLICATION OF STATISTICS

SUBCHAPTER I—COTTON

SUBCHAPTER II—OILSEEDS, NUTS, AND KERNELS; FATS, OILS, AND GREASES

SUBCHAPTER III—APPAREL AND TEXTILES

SUBCHAPTER IV—QUARTERLY FINANCIAL STATISTICS

SUBCHAPTER V—MISCELLANEOUS

AMENDMENTS

1986—Pub. L. 99–467, § 1(b), Oct. 14, 1986, 100 Stat. 1192, redesignated items for subchapters III and IV as subchapters IV and V, respectively, and added items for subchapter III and section 81.

1983—Pub. L. 97–454, § 1(b), Jan. 12, 1983, 96 Stat. 2494, redesignated item for subchapter III as subchapter IV and added items for subchapter III and section 91.

SUBCHAPTER I—COTTON

§ 41. Collection and publication

The Secretary shall collect and publish statistics concerning the—

(1) amount of cotton ginned;

(2) quantity of raw cotton consumed in manufacturing establishments of every character;

(3) quantity of baled cotton on hand;

(4) number of active consuming cotton spindles;

(5) number of active spindle hours; and

(6) quantity of cotton imported and exported, with the country of origin and destination.

(Aug. 31, 1954, ch. 1158, 68 Stat. 1016.)

HISTORICAL AND REVISION NOTES

Based on title 13, U.S.C., 1952 ed., § 71 (Apr. 2, 1924, ch. 80, § 1, 43 Stat. 31; June 18, 1929, ch. 28, § 21, 46 Stat. 26).

''Secretary'' was substituted for ''Director of the Census'' to conform with 1950 Reorganization Plan No. 5, §§1, 2, effective May 24, 1950, 15 F.R. 3174, 64 Stat. 1263. See Revision Note to section 4 of this title.

Changes were made in phraseology and arrangement.

§ 42. Contents of reports; number of bales of linter; distribution; publication by Department of Agriculture

(a) The statistics of the quantity of cotton ginned shall show the quantity ginned from each crop prior to August 1, September 1, September 15, October 1, October 15, November 1, November 15, December 1, December 15, January 1, January 15, February 1, and March 1; but the Secretary may limit the canvasses of August 1 and September 1 to those sections of the cotton-growing States in which cotton has been ginned.

(b) The quantity of cotton consumed in manufacturing establishments, the quantity of baled cotton on hand, the number of active consuming cotton spindles, the number of active spindle-hours, and the statistics of cotton imported and exported shall relate to each month, and shall be published as soon as possible after the close of the month.

(c) In collecting and publishing statistics of cotton on hand in warehouses and other storage establishments, and of cotton known as the ''carry-over'' in the United States, the Secretary shall ascertain and publish as a separate item in the report of cotton statistics the number of bales of linters as distinguished from the number of bales of cotton.

(d) The Secretary shall furnish to the Department of Agriculture, immediately prior to the publication of each report of that Department regarding the cotton crop, the latest available statistics hereinbefore mentioned, and the Department of Agriculture shall publish the same in connection with each of its reports concerning cotton.

(Aug. 31, 1954, ch. 1158, 68 Stat. 1016; Pub. L. 92–331, § 4, June 30, 1972, 86 Stat. 400.)

HISTORICAL AND REVISION NOTES

Based on title 13, U.S.C., 1952 ed., §§72, 72a (Apr. 2, 1924, ch. 80, § 2, 43 Stat. 31; June 18, 1929, ch. 28, § 21, 46 Stat. 26; June 27, 1930, ch. 639, 46 Stat. 821; June 28, 1949, ch. 256, § 1, 63 Stat. 278).

Section consolidates sections 72 and 72a of title 13, U.S.C., 1952 ed.

''Secretary'' was substituted for ''Director of the Census'' to conform with 1950 Reorganization Plan No. 5, §§1, 2, effective May 24, 1950, 15 F.R. 3174, 64 Stat. 1263. See Revision Note to section 4 of this title.

Changes were made in phraseology and arrangement.

AMENDMENTS

1972—Subsec. (a). Pub. L. 92–331 substituted ''September 1, September 15, October 1, October 15, November 1, November 15, December 1, December 15, January 1, January 15, February 1,'' for ''August 16, September 1, September 16, October 1, October 18, November 1, November 14, December 1, December 13, January 16,'' and ''September 1'' for ''August 16''.

§ 43. Records and reports of cotton ginners

Every cotton ginner shall keep a record of the county or parish in which each bale of cotton ginned by him is grown and report at the completion of the ginning season, but not later than the March canvass, of each year a segregation of the total number of bales ginned by counties or parishes in which grown.

(Aug. 31, 1954, ch. 1158, 68 Stat. 1016; Pub. L. 92–143, Oct. 15, 1971, 85 Stat. 393.)

HISTORICAL AND REVISION NOTES

Based on title 13, U.S.C., 1952 ed., § 74 (Apr. 2, 1924, ch. 80, § 4, 43 Stat. 32; June 18, 1929, ch. 28, § 21, 46 Stat. 26; June 14, 1938, ch. 358, 52 Stat. 678).

Section was derived from second paragraph of section 74 of title 13, U.S.C., 1952 ed. For remainder of such section 74, see Distribution Table.

Changes were made in phraseology.

AMENDMENTS

1971—Pub. L. 92–143 inserted ''completion of the ginning season, but not later than the''.

§ 44. Foreign cotton statistics

In addition to the information regarding cotton in the United States provided for in this subchapter, the Secretary shall compile, by correspondence or the use of published reports and documents, any available information concerning the production, consumption, and stocks of cotton in foreign countries, and the number of cotton-consuming spindles in such countries. Each report published by the Department of Commerce or agency or bureau thereof regarding cotton shall contain an abstract of the latest available information obtained under the provisions of this section, and the Secretary shall furnish the same to the Department of Agriculture for publication in connection with the reports of that department concerning cotton in the same manner as in the case of statistics relating to the United States.

(Aug. 31, 1954, ch. 1158, 68 Stat. 1016.)

HISTORICAL AND REVISION NOTES

Based on title 13, U.S.C., 1952 ed., § 75 (Apr. 2, 1924, ch. 80, § 5, 43 Stat. 32; June 18, 1929, ch. 28, § 21, 46 Stat. 26).

References to the Director of the Census were changed to references to the Secretary (of Commerce), and words ''Department of Commerce or agency or bureau thereof'' were substituted for ''Bureau of the Census'', to conform with 1950 Reorganization Plan No. 5, §§1, 2, effective May 24, 1950, 15 F.R. 3174, 64 Stat. 1263. See Revision Note to section 4 of this title.

Changes were made in phraseology.

§ 45. Simultaneous publication of cotton reports

The reports of cotton ginned to the dates as of which the Department of Agriculture is also required to issue cotton crop reports shall be issued simultaneously with the cotton crop reports of that department, the two reports to be issued from the same place at 3 o'clock postmeridian on or before the 12th day of the month to which the respective reports relate.

(Aug. 31, 1954, ch. 1158, 68 Stat. 1017; Pub. L. 92–331, § 3, June 30, 1972, 86 Stat. 400.)

HISTORICAL AND REVISION NOTES

Based on title 13, U.S.C., 1952 ed., § 76 (Apr. 2, 1924, ch. 80, § 6, 43 Stat. 32; June 18, 1929, ch. 28, § 21, 46 Stat. 26; June 28, 1949, ch. 256, § 2, 63 Stat. 278).

AMENDMENTS

1972—Pub. L. 92–331 substituted provisions requiring the two reports to be issued from the same place at 3

o'clock postmeridian on or before the 12th day of the month to which the respective reports relate for provisions requiring the two reports to be issued from the same place at 11 o'clock antemeridian on the 8th day following that on which the respective reports relate, and struck out provisions setting forth the date of release in the event the original release date falls on a Sunday, legal holiday, or other nonworkday in the Department of Commerce at Washington.

SUBCHAPTER II—OILSEEDS, NUTS, AND KERNELS; FATS, OILS, AND GREASES

§ 61. Collection and publication

(a) The Secretary shall collect, collate, and publish monthly statistics concerning—

(1) the quantities of—

(A) cotton seed, soybeans, peanuts, flaxseed, corn germs, copra, sesame seed, babassu nuts and kernels, and other oilseeds, nuts, and kernels received, crushed, and on hand at oil mills;

(B) crude and refined oils, cakes, and meals, and other primary products, by type or kind, of the seeds, nuts, and kernels referred to in clause (A) of this paragraph, manufactured, shipped out, and on hand at oil mills and processing establishments;

(C) crude and refined vegetable oils, by type or kind, used by class of product and held by manufacturers of vegetable shortening, margarine, soap, and other principal products using large quantities of vegetable oils;

(D) crude and refined vegetable oils, by type or kind, held in warehouses and in transit to consuming establishments; and

(2) the quantities, by types or kinds, of—

(A) animal fats and oils and greases produced;

(B) animal fats and oils and greases shipped and held by producers;

(C) animal fats and oils and greases, fish and marine mammal oils used by class of product and held by manufacturers of shortening, margarine, soap, and other principal products which require the use of large quantities of animal fats and oils and greases, fish and marine mammal oils;

(D) animal fats and oils and greases, fish and marine mammal oils held in warehouses, cold storage, and in transit to consuming establishments.

(b) The Secretary shall not be required to collect, more frequently than he deems necessary to provide reliable statistical reports, information from any person who produces, holds, or consumes fats and oils in inconsequential quantities.

(Aug. 31, 1954, ch. 1158, 68 Stat. 1017.)

HISTORICAL AND REVISION NOTES

Based on title 13, U.S.C., 1952 ed., § 81 (Aug. 7, 1916, ch. 274, § 1, 39 Stat. 436; July 25, 1947, ch. 331, 61 Stat. 457).

References to the Secretary (of Commerce) were substituted for references to the Director of the Census, to conform with 1950 Reorganization Plan No. 5, §§ 1, 2, effective May 24, 1950, 15 F.R. 3174, 64 Stat. 1263. See Revision Note to section 4 of this title.

Changes were made in phraseology and arrangement.

§ 62. Additional statistics

This subchapter does not restrict or limit the Secretary in the collection and publication, under the general authority of the Secretary, of such statistics on fats and oils or products thereof not specifically required in this subchapter, as he deems to be in the public interest.

(Aug. 31, 1954, ch. 1158, 68 Stat. 1018.)

HISTORICAL AND REVISION NOTES

Based on title 13, U.S.C., 1952 ed., § 85 (Aug. 7, 1916, ch. 274, § 5, as added July 25, 1947, ch. 331, 61 Stat. 457).

References to the Secretary (of Commerce) were substituted for reference to the Director of the Census and for reference to the Bureau (of the Census), to conform with 1950 Reorganization Plan No. 5, §§ 1, 2, effective May 24, 1950, 15 F.R. 3174, 64 Stat. 1263. See Revision Note to section 4 of this title.

Changes were made in phraseology.

§ 63. Duplicate collection of statistics prohibited; access to available statistics

Statistics required under Federal law, as of the effective date of this title, to be collected by any other Federal department or agency in a manner comparable both as to form and period of time to the collection of statistics provided for by this subchapter shall not be collected by the Secretary under the authority of this subchapter. Immediately upon his request, the Secretary shall have access to any such statistics and shall include them in the publication required by this subchapter.

(Aug. 31, 1954, ch. 1158, 68 Stat. 1018.)

HISTORICAL AND REVISION NOTES

Based on title 13, U.S.C., 1952 ed., § 86 (Aug. 7, 1916, ch. 274, § 6, as added July 25, 1947, ch. 331, 61 Stat. 457).

References to the Secretary (of Commerce) were substituted for references to the Director of the Census to conform with 1950 Reorganization Plan No. 5, §§ 1, 2, effective May 24, 1950, 15 F.R. 3174, 64 Stat. 1263. See Revision Note to section 4 of this title.

Words ", as of the effective date of this title," were inserted in the first sentence for the purpose of clarity.

Changes were made in phraseology.

REFERENCES IN TEXT

The effective date of this title, referred to in text, is Jan. 1, 1955.

SUBCHAPTER III—APPAREL AND TEXTILES

§ 81. Statistics on apparel and textile industries

The Secretary shall collect and publish quarterly statistics relating to domestic apparel and textile industries.

(Added Pub. L. 99–467, § 1(a), Oct. 14, 1986, 100 Stat. 1192.)

SUBCHAPTER IV—QUARTERLY FINANCIAL STATISTICS

AMENDMENTS

1986—Pub. L. 99–467, § 1(a), Oct. 14, 1986, 100 Stat. 1192, substituted "IV" for "III" as subchapter designation.

§ 91. Collection and publication

(a) The Secretary shall collect and publish quarterly financial statistics of business operations, organization, practices, management,

and relation to other businesses, including data on sales, expenses, profits, assets, liabilities, stockholders' equity, and related accounts generally used by businesses in income statements, balance sheets, and other measures of financial condition.

(b) Except to the extent determined otherwise by the Secretary on the basis of changed circumstances, the nature of statistics collected and published under this section, and the manner of the collection and publication of such statistics, shall conform to the quarterly financial reporting program carried out by the Federal Trade Commission before the effective date of this section under section 6(b) of the Federal Trade Commission Act.

(c) For purposes of section 6103(j)(1) of the Internal Revenue Code of 1986, the conducting of the quarterly financial report program under this section shall be considered as the conducting of a related statistical activity authorized by law.

(d)(1) The Secretary shall not select an organization or entity for participation in a survey, if—

(A) the organization or entity—

(i) has assets of less than $50,000,000;

(ii) completed participation in a prior survey in the preceding 10-year period, as determined by the Secretary; and

(iii) was selected for that prior survey participation after September 30, 1990; or

(B) the organization or entity—

(i) has assets of more than $50,000,000 and less than $100,000,000;

(ii) completed participation in a prior survey in the preceding 2-year period, as determined by the Secretary; and

(iii) was selected for that prior survey participation after September 30, 1995.

(2)(A) The Secretary shall furnish advice and similar assistance to ease the burden of a small business concern which is attempting to compile and furnish the business information required of organizations and entities participating in the survey.

(B) To facilitate the provision of the assistance under subparagraph (A), the Secretary shall establish a toll-free telephone number.

(C) The Secretary shall expand the use of statistical sampling techniques to select organizations and entities having assets less than $100,000,000 to participate in the survey.

(3) The Secretary may undertake such additional paperwork burden reduction initiatives with respect to the conduct of the survey as may be deemed appropriate by the Secretary.

(4) For purposes of this subsection:

(A) The term ''small business concern'' means a business concern that meets the requirements of section 3(a) of the Small Business Act and the regulations promulgated pursuant thereto.

(B) The term ''survey'' means the collection of information by the Secretary pursuant to this section for the purpose of preparing the publication entitled ''Quarterly Financial Report for Manufacturing, Mining, and Trade Corporations''.

(Added Pub. L. 97–454, §1(a)(2), Jan. 12, 1983, 96 Stat. 2494; amended Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 104–13, §3, May 22, 1995, 109 Stat. 184.)

TERMINATION OF SECTION

For termination of section by section 4(b) of Pub. L. 97–454, see Effective and Termination Date note below.

REFERENCES IN TEXT

The effective date of this section, referred to in subsec. (b), is Jan. 12, 1983, see Effective and Termination Date note set out below.

Section 6(b) of the Federal Trade Commission Act, referred to in subsec. (b), is classified to section 46(b) of Title 15, Commerce and Trade.

Section 6103(j)(1) of the Internal Revenue Code of 1986, referred to in subsec. (c), is classified to section 6103(j)(1) of Title 26, Internal Revenue Code.

Section 3(a) of the Small Business Act, referred to in subsec. (d)(4)(A), is classified to section 632(a) of Title 15, Commerce and Trade.

AMENDMENTS

1995—Subsec. (d). Pub. L. 104–13 added subsec. (d).

1986—Subsec. (c). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–13 effective Oct. 1, 1995, see section 4(a) of Pub. L. 104–13, set out as an Effective Date note under section 3501 of Title 44, Public Printing and Documents.

EFFECTIVE AND TERMINATION DATE; REPORT TO CONGRESS

Pub. L. 97–454, §4, Jan. 12, 1983, 96 Stat. 2495, as amended by Pub. L. 101–227, §1, Dec. 12, 1989, 103 Stat. 1943; Pub. L. 103–105, §1(a), Oct. 12, 1993, 107 Stat. 1030; Pub. L. 105–252, §1, Oct. 9, 1998, 112 Stat. 1886; Pub. L. 109–79, §1, Sept. 30, 2005, 119 Stat. 2044, provided that:

''(a) This Act [enacting section 91 of this title and provisions set out as notes under sections 23 and 91 of this title] shall take effect on the date of the enactment of this Act [Jan. 12, 1983].

''(b) This Act, including the amendments made by this Act, shall cease to have effect after September 30, 2015.

''(c) Not later than 2 years after such effective date [Jan. 12, 1983], the Secretary of Commerce shall submit a report to the Congress regarding the administration of the program transferred by this Act [enacting section 91 of this title and provisions set out as notes under sections 23 and 91 of this title]. Such report shall describe—

''(1) the estimated respondent burden, including any changes in the estimated respondent burden after the transfer of such program;

''(2) the application made by various public and private organizations of the information published under such program; and

''(3) technical or administration problems encountered in carrying out such program.''

[Section 1(b) of Pub. L. 103–105 provided that: ''The amendment made under subsection (a) [amending section 4 of Pub. L. 97–454, set out above] shall take effect on September 30, 1993.]

TRANSFER OF FUNCTIONS RELATING TO QUARTERLY FINANCIAL STATISTICS

Section 2 of Pub. L. 97–454, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) There are transferred to the Secretary of Commerce, for administration under section 91 of title 13, United States Code, all functions relating to the quarterly financial report program which was carried out by the Federal Trade Commission before the effective date of this Act [Jan. 12, 1983] pursuant to the author-

ity of section 6(b) of the Federal Trade Commission Act (15 U.S.C. 46(b)).

''(b) All personnel, property, and records of the Federal Trade Commission which the Director of the Office of Management and Budget determines, after consultation with the Secretary of Commerce and the Chairman of the Federal Trade Commission, to be employed, held, or used in connection with any function relating to the quarterly financial report program shall be transferred to the Department of Commerce. For purposes of sections 6103, 7213, and 7431, and other provisions of the Internal Revenue Code of 1986 [26 U.S.C. 6103, 7213, 7431], return information (as defined in section 6103(b) of such Code) which is transferred under this subsection shall be treated as if it were furnished to the Bureau of the Census under section 6103(j)(1) of such Code solely for administering the quarterly financial report program under section 91 of title 13, United States Code. Such transfer shall be carried out not later than 90 days after the effective date of this Act [Jan. 12, 1983].''

SUBCHAPTER V—MISCELLANEOUS

AMENDMENTS

1986—Pub. L. 99–467, § 1(a), Oct. 14, 1986, 100 Stat. 1192, substituted ''V'' for ''IV'' as subchapter designation.

1983—Pub. L. 97–454, § 1(a)(1), Jan. 12, 1983, 96 Stat. 2494, substituted ''IV'' for ''III'' as subchapter designation.

§ 101. Defective, dependent, and delinquent classes; crime

(a) The Secretary may collect decennially statistics relating—

(1) to the defective, dependent, and delinquent classes; and

(2) to crime, including judicial statistics pertaining thereto.

(b) The statistics authorized by subsection (a) of this section shall include information upon the following questions, namely: age, sex, color, nativity, parentage, literacy by race, color, nativity, and parentage, and such other questions relating to such subjects as the Secretary deems proper.

(c) In addition to the decennial collections authorized by subsections (a) and (b) of this section, the Secretary may compile and publish annually statistics relating to crime and to the defective, dependent, and delinquent classes.

(Aug. 31, 1954, ch. 1158, 68 Stat. 1018.)

HISTORICAL AND REVISION NOTES

Based on title 13, U.S.C., 1952 ed., §§ 111, 113 (Mar. 6, 1902, ch. 139, § 7, 32 Stat. 52; June 7, 1906, ch. 3048, 34 Stat. 218; June 18, 1929, ch. 28, § 3, 46 Stat. 21; Mar. 4, 1931, ch. 490, 46 Stat. 1517; 1939 Reorganization Plan No. II, § 4(e), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1431; 1940 Reorganization Plan No. III, § 3, 5 F.R. 2107, 54 Stat. 1232; June 25, 1947, ch. 124, 61 Stat. 163; Sept. 7, 1950, ch. 910, § 4, 64 Stat. 785).

Section consolidates part of section 111 of title 13, U.S.C., 1952 ed., with section 113 of such title which also related to statistics with respect to crime and to the ''defective, dependent, and delinquent classes''.

''Secretary'', meaning the Secretary of Commerce, was substituted for ''Director of the Census'' to conform with Reorganization Plan No. 5, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263. See Revision Note to section 4 of this title.

The provisions of section 111 of title 13, U.S.C., 1952 ed., authorizing statistics relating to transportation by water, and express business, to mines, mining, quarries, and minerals, to savings banks and other savings institutions, mortgage, loan, and investment companies, and similar institutions, and to street railways, electric light and power, telephone, and telegraph business, were omitted as superseded and covered by sections 121–123 of such title (enacted in 1948), which are set out elsewhere in this title. See Distribution Table.

Section 111 of title 13, U.S.C., 1952 ed., also authorized the decennial collection of statistics relating to the fishing industry ''in cooperation with the Fish and Wildlife Service''. In the basic statutory provision (see amendment by act June 7, 1906, ch. 3048, 34 Stat. 218, ''Fish and Wildlife Service'' read ''Bureau of Fisheries'' and it was changed, by the codifiers, in such section 111 to the former designation because of 1940 Reorganization Plan No. III, § 3, 5 F.R. 2107, 54 Stat. 1232, which consolidated the Bureau of Fisheries and the Bureau of Biological Survey into one agency to be known as the ''Fish and Wildlife Service''. However, at the time of the enactment of the 1906 act, referred to above, both the Bureau of the Fisheries, and the Census Bureau (then referred to as the ''Census Office''), were in the Department of Commerce. The Bureau of Fisheries was transferred to the Department of the Interior by 1939 Reorganization Plan No. II, § 4(e), 4 F.R. 2731, 53 Stat. 1431, and it is within that department that the Fish and Wildlife Service now functions. Therefore, such provision in section 111 of title 13, U.S.C., 1952 ed., has been omitted from this revised title as obsolete. In any event section 121 of title 13, U.S.C., 1952 ed. (subchapter I of chapter 5 of this revised title) is broad enough to authorize such collection.

The provisions of section 111 of title 13, U.S.C., 1952 ed., which authorized statistics relating to religion, and the provisions thereof which related to the designation of reports, are set out as separate sections in this subchapter; and the provisions thereof which related to the preparation of schedules, and which authorized the appointment of special agents, are set out in chapter 1 of this title. See Distribution Table.

The proviso in section 111 of title 13, U.S.C., 1952 ed., which prohibited the collection of statistics relating to religious or church membership when the disclosure of such information was prohibited by religious or church doctrine, teaching or discipline, has been incorporated in chapter 7 of this title. See Distribution Table.

§ 102. Religion

The Secretary may collect decennially statistics relating to religious bodies.

(Aug. 31, 1954, ch. 1158, 68 Stat. 1018.)

HISTORICAL AND REVISION NOTES

Based on title 13, U.S.C., 1952 ed., § 111 (Mar. 6, 1902, ch. 139, § 7, 32 Stat. 52; June 7, 1906, ch. 3048, 34 Stat. 218; June 18, 1929, ch. 28, § 3, 46 Stat. 21; 1939 Reorganization Plan No. II, § 4(e), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1431; 1940 Reorganization Plan No. III, § 3, eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1232; June 25, 1947, ch. 124, 61 Stat. 163; Sept. 7, 1950, ch. 910, § 4, 64 Stat. 785).

Section was taken from that part of section 111 of title 13, U.S.C., 1952 ed., which related to statistics on religion. For remainder of such section 111, see this subchapter and Distribution Table.

Changes were made in phraseology.

§ 103. Designation of reports

All reports covering any of the statistics collected under the provisions of this subchapter shall be designated as ''Special Reports'' followed by the name of whatever bureau or agency of the Department of Commerce is designated by the Secretary to collect and compile such statistics.

(Aug. 31, 1954, ch. 1158, 68 Stat. 1018.)

HISTORICAL AND REVISION NOTES

Based on title 13, U.S.C., 1952 ed., § 111 (Mar. 6, 1902, ch. 139, § 7, 32 Stat. 52; June 7, 1906, ch. 3048, 34 Stat. 218;

June 18, 1929, ch. 28, §3, 46 Stat. 21; 1939 Reorganization Plan No. II, §4(e), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1431; 1940 Reorganization Plan No. III, §3, eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1232; June 25, 1947, ch. 124, 61 Stat. 163; Sept. 7, 1950, ch. 910, §4, 64 Stat. 785).

Section was taken from that part of section 111 of title 13, U.S.C., 1952 ed., which related to designation of reports prepared under that section. For remainder of such section 111, see this subchapter, and Distribution Table.

Section 111 of title 13, U.S.C. 1952 ed., provided that the reports prepared under the provisions of that section should be designated as ''Special Reports of the Census Office''. In this revised section it is provided that such reports shall be designated as '''Special Reports' followed by the name of whatever bureau or agency of the Department of Commerce is designated by the Secretary to collect and compile such statistics''. This change conforms with 1950 Reorganization Plan No. 5, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, which transferred the functions of all agencies, bureaus, officers, and employees of the Department of Commerce to the Secretary, and vested power in him to delegate any of such transferred functions, or any of his other functions, to any of such agencies, bureaus, officers, or employees. See section 4 of this title.

Changes were made in phraseology.

Section 7 of the act of Mar. 6, 1902, ch. 139, 32 Stat. 52, cited above, from which section 111 of title 13, U.S.C., 1952 ed., was derived, contained additional provisions (which were not classified to the United States Code) relating to the duty of the Director of the Census to publish the Official Register of the United States, and to the transmission to him of the data to be included therein. Such provisions have been omitted as they were superseded by act Mar. 3, 1925, ch. 421, §2(a)(b), 43 Stat. 1105, which was formerly classified to section 3 of title 13, U.S.C., 1952 ed., and which, in turn, was repealed by section 5 of act Aug. 28, 1935, ch. 795, 49 Stat. 957, and superseded by sections 1 and 2 of that act. Such sections 1 and 2, as amended, are classified to section 654 of title 5, U.S.C., 1952 ed., Executive Departments and Government Officers and Employees. Under that section, the Official Register is published by the Civil Service Commission. Provisions relating to its distribution are contained in sections 139, 139a and 280a of title 44, U.S.C., 1952 ed., Public Printing and Documents.

CHAPTER 5—CENSUSES

[1] Item 163 editorially inserted because section 163 is still in existence. Item 163 was eliminated in the general amendment of analysis by Pub. L. 85–207, §7, Aug. 28, 1957, 71 Stat. 482.

AMENDMENTS

1997—Pub. L. 105–113, §3(b)(2), Nov. 21, 1997, 111 Stat. 2275, substituted ''POPULATION, HOUSING, AND UNEMPLOYMENT'' for ''POPULATION, HOUSING, AGRICULTURE, IRRIGATION, AND UNEMPLOYMENT'' in the item for subchapter II, and struck out item 142 ''Agriculture and irrigation''.

1986—Pub. L. 99–544, §1(c), Oct. 27, 1986, 100 Stat. 3046, substituted ''IRRIGATION, AND UNEMPLOYMENT'' for ''IRRIGATION, DRAINAGE, AND UNEMPLOYMENT'' in item for subchapter II, and ''Agriculture and irrigation'' for ''Agriculture, irrigation, and drainage'' in item 142.

1976—Pub. L. 94–521, §§7(b), 8(b), 11(b), Oct. 17, 1976, 90 Stat. 2462–2464, substituted ''Population and other census information'' for ''Population, unemployment, and housing'' in item 141, without reference to amendment thereto by Pub. L. 94–171, and added items 181 to 184 and 196, respectively.

1975—Pub. L. 94–171, §2(b), Dec. 23, 1975, 89 Stat. 1024, inserted ''; tabulation for legislative apportionment'' in item 141.

1957—Pub. L. 85–207, §7, Aug. 28, 1957, 71 Stat. 482, in amending analysis generally, substituted ''MANUFACTURES'' for ''MANUFACTURERS'' in item for subchapter I; substituted in item 141 ''Population, unemployment, and housing'' for ''Population, agriculture, irrigation, drainage, and unemployment; territory included'', and in item 142 ''Agriculture, irrigation, and drainage.'' for ''Housing, scope of inquiries; territory included; supplementary statistics.'', struck out items 143 to 146, 162 and 163; and added Subchapter V.

SUBCHAPTER I—MANUFACTURES, MINERAL INDUSTRIES, AND OTHER BUSINESSES

§131. Collection and publication; five-year periods

The Secretary shall take, compile, and publish censuses of manufactures, of mineral industries, and of other businesses, including the distributive trades, service establishments, and transportation (exclusive of means of transportation for which statistics are required by law to be filed with, and are compiled and published by, a designated regulatory body), in the year 1964, then in the year 1968, and every fifth year thereafter, and each such census shall relate to the year immediately preceding the taking thereof.

(Aug. 31, 1954, ch. 1158, 68 Stat. 1019; Pub. L. 85–207, §8, Aug. 28, 1957, 71 Stat. 482; Pub. L. 88–532, Aug. 31, 1964, 78 Stat. 737.)

HISTORICAL AND REVISION NOTES

Based on title 13, U.S.C., 1952 ed., §121 (June 19, 1948, ch. 502, §1, 62 Stat. 478; June 18, 1954, ch. 315, 68 Stat. 258).

Section was subsection (a) of section 121 of title 13, U.S.C., 1952 ed. The remainder of such section 121, which constituted subsection (b) thereof, is incorporated in subchapter IV of this chapter.

At the beginning, ''The Secretary'', meaning the Secretary of Commerce, was substituted for a reference to the Director of the Bureau of the Census, and, at the end, the provision that the territorial scope of the censuses should be determined by the Secretary was substituted for the provision of section 121 of title 13, U.S.C., 1952 ed., that such determination should be made by the Director with the approval of the Secretary, to conform with 1950 Reorganization Plan No. 5, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, which

transferred all functions of all officers and employees, agencies and bureaus of the Department of Commerce to the Secretary. However, the Secretary, under that plan, may delegate any of such transferred functions, as well as any other of his functions, to any of such officers, employees, agencies and bureaus. See, also, section 4 of this title.

The reference in section 121 of title 13, U.S.C., 1952 ed., to the year ''1949'' as the year for commencement of the quinquennial censuses was changed to the year ''1954'', since the former designation is obsolete, and the provision of such section that the census of manufacturers should not be taken in 1949 was omitted as obsolete.

Changes were made in phraseology.

AMENDMENTS

1964—Pub. L. 88–532 substituted ''in the year 1964, then in the year 1968, and'' for ''in the year 1954 and'' and struck out provisions which related to the taking of certain censuses in the year 1955.

1957—Pub. L. 85–207 struck out sentence which included the United States and its territories and such possessions as the Secretary might determine in the censuses to be taken. See section 191 of this title.

CENSUS DATA ON WOMEN OWNED BUSINESSES; STUDY AND REPORT

Pub. L. 100–533, title V, § 501, Oct. 25, 1988, 102 Stat. 2697, provided that:

''(a) BUREAU OF LABOR STATISTICS.—The Bureau of Labor Statistics of the Department of Labor shall include in any census report it may prepare on women owned business data on—

''(1) sole proprietorships;

''(2) partnerships; and

''(3) corporations.

''(b) BUREAU OF THE CENSUS.—The Bureau of the Census of the Department of Commerce shall include in its Business Census for 1992 and each such succeeding census data on the number of corporations which are 51 per centum or more owned by women.

''(c) COMBINED STUDY.—Not later than one hundred and eighty days after the effective date of this section [Oct. 25, 1988], the Office of the Chief Counsel for Advocacy of the Small Business Administration (hereinafter referred to in this subsection as the 'Office') shall conduct a study and prepare a report recommending the most cost effective and accurate means to gather and present the data required to be collected pursuant to subsections (a) and (b). The Department of Commerce and the Department of Labor shall provide the Office such assistance and cooperation as may be necessary and appropriate to achieve the purposes of this subsection.''

§ 132. Controlling law; effect on other agencies

To the extent that the provisions of this subchapter or subchapter IV of this chapter conflict with any other provision of this title or other law, pertaining to the Secretary of the Department of Commerce, the provisions of this title shall control; but nothing in this title shall be deemed to revoke or impair the authority of any other Federal agency with respect to the collection or release of information.

(Aug. 31, 1954, ch. 1158, 68 Stat. 1019.)

HISTORICAL AND REVISION NOTES

Based on title 13, U.S.C., 1952 ed., § 123 (June 19, 1948, ch. 502, § 3, 62 Stat. 479).

Section was derived from all of section 123 of title 13, U.S.C., 1952 ed., except the first sentence. That sentence is incorporated with other provisions in chapter 1 of this title. See Distribution Table.

The reference ''Secretary or Department of Commerce'' was substituted for reference to the Bureau of the Census to conform with 1950 Reorganization Plan No. 5, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263. See Revision Note to section 4 of this title.

Changes were made in phraseology.

SUBCHAPTER II—POPULATION, HOUSING, AND UNEMPLOYMENT

AMENDMENTS

1997—Pub. L. 105–113, § 3(b)(1), Nov. 21, 1997, 111 Stat. 2275, substituted ''POPULATION, HOUSING, AND UNEMPLOYMENT'' for ''POPULATION, HOUSING, AGRICULTURE, IRRIGATION,, AND UNEMPLOYMENT''.

1986—Pub. L. 99–544, § 1(b), Oct. 27, 1986, 100 Stat. 3046, struck out ''DRAINAGE'' after ''IRRIGATION,''.

§ 141. Population and other census information

(a) The Secretary shall, in the year 1980 and every 10 years thereafter, take a decennial census of population as of the first day of April of such year, which date shall be known as the ''decennial census date'', in such form and content as he may determine, including the use of sampling procedures and special surveys. In connection with any such census, the Secretary is authorized to obtain such other census information as necessary.

(b) The tabulation of total population by States under subsection (a) of this section as required for the apportionment of Representatives in Congress among the several States shall be completed within 9 months after the census date and reported by the Secretary to the President of the United States.

(c) The officers or public bodies having initial responsibility for the legislative apportionment or districting of each State may, not later than 3 years before the decennial census date, submit to the Secretary a plan identifying the geographic areas for which specific tabulations of population are desired. Each such plan shall be developed in accordance with criteria established by the Secretary, which he shall furnish to such officers or public bodies not later than April 1 of the fourth year preceding the decennial census date. Such criteria shall include requirements which assure that such plan shall be developed in a nonpartisan manner. Should the Secretary find that a plan submitted by such officers or public bodies does not meet the criteria established by him, he shall consult to the extent necessary with such officers or public bodies in order to achieve the alterations in such plan that he deems necessary to bring it into accord with such criteria. Any issues with respect to such plan remaining unresolved after such consultation shall be resolved by the Secretary, and in all cases he shall have final authority for determining the geographic format of such plan. Tabulations of population for the areas identified in any plan approved by the Secretary shall be completed by him as expeditiously as possible after the decennial census date and reported to the Governor of the State involved and to the officers or public bodies having responsibility for legislative apportionment or districting of such State, except that such tabulations of population of each State requesting a tabulation plan, and basic tabulations of population of each other State, shall, in any event, be completed, reported, and transmitted to each respective State within one year after the decennial census date.

(d) Without regard to subsections (a), (b), and (c) of this section, the Secretary, in the year 1985 and every 10 years thereafter, shall conduct a mid-decade census of population in such form and content as he may determine, including the use of sampling procedures and special surveys, taking into account the extent to which information to be obtained from such census will serve in lieu of information collected annually or less frequently in surveys or other statistical studies. The census shall be taken as of the first day of April of each such year, which date shall be known as the ''mid-decade census date''.

(e)(1) If—

(A) in the administration of any program established by or under Federal law which provides benefits to State or local governments or to other recipients, eligibility for or the amount of such benefits would (without regard to this paragraph) be determined by taking into account data obtained in the most recent decennial census, and

(B) comparable data is obtained in a mid-decade census conducted after such decennial census,

then in the determination of such eligibility or amount of benefits the most recent data available from either the mid-decade or decennial census shall be used.

(2) Information obtained in any mid-decade census shall not be used for apportionment of Representatives in Congress among the several States, nor shall such information be used in prescribing congressional districts.

(f) With respect to each decennial and mid-decade census conducted under subsection (a) or (d) of this section, the Secretary shall submit to the committees of Congress having legislative jurisdiction over the census—

(1) not later than 3 years before the appropriate census date, a report containing the Secretary's determination of the subjects proposed to be included, and the types of information to be compiled, in such census;

(2) not later than 2 years before the appropriate census date, a report containing the Secretary's determination of the questions proposed to be included in such census; and

(3) after submission of a report under paragraph (1) or (2) of this subsection and before the appropriate census date, if the Secretary finds new circumstances exist which necessitate that the subjects, types of information, or questions contained in reports so submitted be modified, a report containing the Secretary's determination of the subjects, types of information, or questions as proposed to be modified.

(g) As used in this section, ''census of population'' means a census of population, housing, and matters relating to population and housing.

(Aug. 31, 1954, ch. 1158, 68 Stat. 1019; Pub. L. 85–207, §9, Aug. 28, 1957, 71 Stat. 483; Pub. L. 94–171, §§1, 2(a), Dec. 23, 1975, 89 Stat. 1023, 1024; Pub. L. 94–521, §7(a), Oct. 17, 1976, 90 Stat. 2461.)

HISTORICAL AND REVISION NOTES

Based on title 13, U.S.C., 1952 ed., §201 (June 18, 1929, ch. 28, §1, 46 Stat. 21; May 17, 1932, ch. 190, 47 Stat. 158).

References to the Secretary, meaning the Secretary of Commerce, were substituted for references to the Director of the Census, to conform with 1950 Reorganization Plan No. 5, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263. See Revision Note to section 4 of this title.

The provision for taking the censuses in ''1930 and every ten years thereafter'' was changed to ''1960 and every ten years thereafter'' since the censuses for the years 1930, 1940 and 1950 have been completed.

The requirement that decennial censuses of ''distribution'' and ''mines'' should also be taken was omitted as superseded by section 121 of title 13, U.S.C., 1952 ed. (enacted in 1948), the provisions of which were carried into subchapter I of this chapter.

Section 1442 of title 42, U.S.C., 1952 ed., the Public Health and Welfare (which section has been transferred in its entirety to this revised title), made all provisions of chapter 4 of title 13, U.S.C., 1952 ed., applicable to the housing censuses provided for in such section. However, section 201 of such title 13 (which section was a part of such chapter 4), which, as indicated above, has been carried into this revised section, could not, except, possibly, for the provisions thereof relating to the territorial scope of the censuses and to the census duties of the governors of Guam, Samoa, the Virgin Islands, and the Canal Zone, have any relevancy to such housing censuses, and such section 1442 of title 42, U.S.C., 1952 ed., contained its own provisions relating to territorial scope of the housing censuses. Therefore the provisions of this revised section have not been made so applicable.

Changes were made in phraseology.

AMENDMENTS

1976—Pub. L. 94–521 substituted ''Population and other census information'' for ''Population, unemployment, and housing'' in section catchline, without reference to amendment of catchline by Pub. L. 94–171.

Subsec. (a). Pub. L. 94–521 substituted ''1980'' for ''1960'' and ''decennial census of population'' for ''census of population, unemployment, and housing (including utilities and equipment)'', inserted ''of such year'' after ''April'', substituted ''which date shall be known as the decennial census date'' for ''which shall be known as the census date'', and inserted provisions authorizing the Secretary to take the decennial census in whatever form and content he determines, using sampling procedures and special surveys, and authorizing him to obtain other such census information as is necessary, in connection with the decennial census.

Subsec. (b). Pub. L. 94–521 inserted ''under subsection (a) of this section'' after ''population by States'', inserted ''in Congress among the several States'' after ''Representatives'', and substituted ''9 months after the census date'' for ''eight months of the census date''.

Subsec. (c). Pub. L. 94–521 substituted ''the decennial census date'' for ''the census date'' wherever appearing.

Subsecs. (d) to (g). Pub. L. 94–521 added subsecs. (d) to (g).

1975—Pub. L. 94–171, §2(a), inserted ''; tabulation for legislative apportionment'' in section catchline.

Subsec. (c). Pub. L. 94–171, §1, added subsec. (c).

1957—Pub. L. 85–207 substituted ''Population, unemployment, and housing'' for ''Population, agriculture, irrigation, drainage, and unemployment; territory excluded'' in section catchline; inserted in text housing census provisions, struck out census coverage of agriculture, irrigation, and drainage and geographical provisions, and designated existing provisions as so amended as subsec. (a); and added subsec. (b). Census of agriculture, irrigation, and drainage and the geographical provisions are covered by sections 142 and 191 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–521 effective Oct. 17, 1976, see section 17 of Pub. L. 94–521, set out as a note under section 1 of this title.

STATISTICAL SAMPLING OR ADJUSTMENT IN DECENNIAL ENUMERATION OF POPULATION

Pub. L. 105–119, title II, §209, Nov. 26, 1997, 111 Stat. 2480, provided that:

''(a) Congress finds that—

''(1) it is the constitutional duty of the Congress to ensure that the decennial enumeration of the population is conducted in a manner consistent with the Constitution and laws of the United States;

''(2) the sole constitutional purpose of the decennial enumeration of the population is the apportionment of Representatives in Congress among the several States;

''(3) section 2 of the 14th article of amendment to the Constitution clearly states that Representatives are to be 'apportioned among the several States according to their respective numbers, counting the whole number of persons in each State';

''(4) article I, section 2, clause 3 of the Constitution clearly requires an 'actual Enumeration' of the population, and section 195 of title 13, United States Code, clearly 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.';

''(5) the decennial enumeration of the population is one of the most critical constitutional functions our Federal Government performs;

''(6) it is essential that the decennial enumeration of the population be as accurate as possible, consistent with the Constitution and laws of the United States;

''(7) the use of statistical sampling or statistical adjustment in conjunction with an actual enumeration to carry out the census with respect to any segment of the population poses the risk of an inaccurate, invalid, and unconstitutional census;

''(8) the decennial enumeration of the population is a complex and vast undertaking, and if such enumeration is conducted in a manner that does not comply with the requirements of the Constitution or laws of the United States, it would be impracticable for the States to obtain, and the courts of the United States to provide, meaningful relief after such enumeration has been conducted; and

''(9) Congress is committed to providing the level of funding that is required to perform the entire range of constitutional census activities, with a particular emphasis on accurately enumerating all individuals who have historically been undercounted, and toward this end, Congress expects—

''(A) aggressive and innovative promotion and outreach campaigns in hard-to-count communities;

''(B) the hiring of enumerators from within those communities;

''(C) continued cooperation with local government on address list development; and

''(D) maximized census employment opportunities for individuals seeking to make the transition from welfare to work.

''(b) Any person aggrieved by the use of any statistical method in violation of the Constitution or any provision of law (other than this Act [see Tables for classification]), in connection with the 2000 or any later decennial census, to determine the population for purposes of the apportionment or redistricting of Members in Congress, may in a civil action obtain declaratory, injunctive, and any other appropriate relief against the use of such method.

''(c) For purposes of this section—

''(1) the use of any statistical method as part of a dress rehearsal or other 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; and

''(2) the report ordered by title VIII of Public Law 105–18 [111 Stat. 217] and the Census 2000 Operational Plan shall be deemed to constitute final agency action regarding the use of statistical methods in the 2000 decennial census, thus making the question of their use in such census sufficiently concrete and final to now be reviewable in a judicial proceeding.

''(d) For purposes of this section, an aggrieved person (described in subsection (b)) includes—

''(1) any resident of a State whose congressional representation or district could be changed as a result of the use of a statistical method challenged in the civil action;

''(2) any Representative or Senator in Congress; and

''(3) either House of Congress.

''(e)(1) Any action brought under this section shall be heard and determined by a district court of three judges in accordance with section 2284 of title 28, United States Code. The chief judge of the United States court of appeals for each circuit shall, to the extent practicable and consistent with the avoidance of unnecessary delay, consolidate, for all purposes, in one district court within that circuit, all actions pending in that circuit under this section. Any party to an action under this section shall be precluded from seeking any consolidation of that action other than is provided in this paragraph. In selecting the district court in which to consolidate such actions, the chief judge shall consider the convenience of the parties and witnesses and efficient conduct of such actions. Any final order or injunction of a United States district court that is issued pursuant to an action brought under this section shall be reviewable by appeal directly to the Supreme Court of the United States. Any such appeal shall be taken by a notice of appeal filed within 10 days after such order is entered; and the jurisdictional statement shall be filed within 30 days after such order is entered. No stay of an order issued pursuant to an action brought under this section may be issued by a single Justice of the Supreme Court.

''(2) It shall be the duty of a United States district court hearing an action brought under this section and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any such matter.

''(f) Any agency or entity within the executive branch having authority with respect to the carrying out of a decennial census may in a civil action obtain a declaratory judgment respecting whether or not the use of a statistical method, in connection with such census, to determine the population for the purposes of the apportionment or redistricting of Members in Congress is forbidden by the Constitution and laws of the United States.

''(g) The Speaker of the House of Representatives or the Speaker's designee or designees may commence or join in a civil action, for and on behalf of the House of Representatives, under any applicable law, to prevent the use of any statistical method, in connection with the decennial census, to determine the population for purposes of the apportionment or redistricting of Members in Congress. It shall be the duty of the Office of the General Counsel of the House of Representatives to represent the House in such civil action, according to the directions of the Speaker. The Office of the General Counsel of the House of Representatives may employ the services of outside counsel and other experts for this purpose.

''(h) For purposes of this section and section 210 [set out below]—

''(1) the term 'statistical method' means an activity related to the design, planning, testing, or implementation of the use of representative sampling, or any other statistical procedure, including statistical adjustment, to add or subtract counts to or from the enumeration of the population as a result of statistical inference; and

''(2) the term 'census' or 'decennial census' means a decennial enumeration of the population.

''(i) Nothing in this Act shall be construed to authorize the use of any statistical method, in connection with a decennial census, for the apportionment or redistricting of Members in Congress.

''(j) Sufficient funds appropriated under this Act or under any other Act for purposes of the 2000 decennial

census shall be used by the Bureau of the Census to plan, test, and become prepared to implement a 2000 decennial census, without using statistical methods, which shall result in the percentage of the total population actually enumerated being as close to 100 percent as possible. In both the 2000 decennial census, and any dress rehearsal or other simulation made in preparation for the 2000 decennial census, the number of persons enumerated without using statistical methods must be publicly available for all levels of census geography which are being released by the Bureau of the Census for: (1) all data releases before January 1, 2001; (2) the data contained in the 2000 decennial census Public Law 94–171 [amending this section] data file released for use in redistricting; (3) the Summary Tabulation File One (STF–1) for the 2000 decennial census; and (4) the official populations of the States transmitted from the Secretary of Commerce through the President to the Clerk of the House used to reapportion the districts of the House among the States as a result of the 2000 decennial census. Simultaneously with any other release or reporting of any of the information described in the preceding sentence through other means, such information shall be made available to the public on the Internet. These files of the Bureau of the Census shall be available concurrently to the release of the original files to the same recipients, on identical media, and at a comparable price. They shall contain the number of persons enumerated without using statistical methods and any additions or subtractions thereto. These files shall be based on data gathered and generated by the Bureau of the Census in its official capacity.

''(k) This section shall apply in fiscal year 1998 and succeeding fiscal years.''

CENSUS MONITORING BOARD

Pub. L. 105–119, title II, § 210(a)–(j), Nov. 26, 1997, 111 Stat. 2483–2487, provided that:

''(a) There shall be established a board to be known as the Census Monitoring Board (hereafter in this section referred to as the 'Board').

''(b) 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 and other simulations of a census in preparation therefor).

''(c)(1) The Board shall be composed of 8 members as follows:

''(A) Two individuals appointed by the majority leader of the Senate.

''(B) Two individuals appointed by the Speaker of the House of Representatives.

''(C) Four individuals appointed by the President, of whom—

''(i) one shall be on the recommendation of the minority leader of the Senate; and

''(ii) one shall be on the recommendation of the minority leader of the House of Representatives.

All members of the Board shall be appointed within 60 days after the date of enactment of this Act [Nov. 26, 1997]. A vacancy in the Board shall be filled in the manner in which the original appointment was made.

''(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.

''(3) The Board shall have—

''(A) a co-chairman who shall be appointed jointly by the members under subsection (c)(1)(A) and (B), and

''(B) a co-chairman who shall be appointed jointly by the members under subsection (c)(1)(C).

''(4) The Board shall meet at the call of either co-chairman.

''(5) A quorum shall consist of five members of the Board.

''(6) The Board may promulgate any regulations necessary to carry out its duties.

''(d)(1) The Board shall have—

''(A) an executive director who shall be appointed jointly by the members under subsection (c)(1)(A) and (B), and

''(B) an executive director who shall be appointed jointly by the members under subsection (c)(1)(C),

each of whom shall be paid at a rate not to exceed level IV of the Executive Schedule.

''(2) Subject to such rules as the Board may prescribe, each executive director—

''(A) may appoint and fix the pay of such additional personnel as that executive director considers appropriate; and

''(B) may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, 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.

Such rules shall include provisions to ensure an equitable division or sharing of resources, as appropriate, between the respective staff of the Board.

''(3) The staff of the Board shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title (relating to classification and General Schedule pay rates).

''(4) The Administrator of the General Services Administration, in coordination with the Secretary of Commerce, shall locate suitable office space for the operation of the Board in the W. Edwards Deming Building in Suitland, Maryland. The facilities shall serve as the headquarters of the Board and shall include all necessary equipment and incidentals required for the proper functioning of the Board.

''(e)(1) For the purpose of carrying out its duties, the Board may hold such hearings (at the call of either co-chairman) and undertake such other activities as the Board determines to be necessary to carry out its duties.

''(2) The Board may authorize any member of the Board or of its staff to take any action which the Board is authorized to take by this subsection.

''(3)(A) Each co-chairman 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.

''(B) The Board or the co-chairmen acting jointly may secure directly from any other Federal agency, including the White House, all information that the Board considers necessary to enable the Board to carry out its duties. Upon request of the Board or both co-chairmen, the head of that agency (or other person duly designated for purposes of this paragraph) shall furnish that information to the Board.

''(4) The Board shall prescribe regulations under which any member of the Board or of its staff, and any person whose services are procured under subsection (d)(2)(B), who gains access to any information or other matter pursuant to this subsection shall, to the extent that any provisions of section 9 or 214 of title 13, United States Code, would apply with respect to such matter in the case of an employee of the Department of Commerce, be subject to such provisions.

''(5) Upon the request of the Board, the head of any Federal agency is authorized to detail, without reimbursement, any of the personnel of such agency to the Board to assist the Board in carrying out its duties. Any such detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

''(6) Upon the request of the Board, the head of a Federal agency shall provide such technical assistance to the Board as the Board determines to be necessary to carry out its duties.

''(7) The Board may use the United States mails in the same manner and under the same conditions as Federal agencies and shall, for purposes of the frank, be considered a commission of Congress as described in section 3215 of title 39, United States Code.

''(8) Upon request of the Board, the Administrator of General Services shall provide to the Board on a reimbursable basis such administrative support services as the Board may request.

''(9) For purposes of costs relating to printing and binding, including the cost of personnel detailed from the Government Printing Office, the Board shall be deemed to be a committee of the Congress.

''(f)(1) The Board shall transmit to the Congress—

''(A) interim reports, with the first such report due by April 1, 1998;

''(B) additional reports, the first of which shall be due by February 1, 1999, the second of which shall be due by April 1, 1999, and subsequent reports at least semiannually thereafter;

''(C) a final report which shall be due by September 1, 2001; and

''(D) any other reports which the Board considers appropriate.

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).

''(2) In addition to any matter otherwise required under this subsection, each such report shall address, with respect to the period covered by such report—

''(A) the degree to which efforts of the Bureau of the Census to prepare to conduct the 2000 census—

''(i) shall achieve maximum possible accuracy at every level of geography;

''(ii) shall be taken by means of an enumeration process designed to count every individual possible; and

''(iii) shall be free from political bias and arbitrary decisions; and

''(B) efforts by the Bureau of the Census intended to contribute to enumeration improvement, specifically, in connection with—

''(i) computer modernization and the appropriate use of automation;

''(ii) address list development;

''(iii) outreach and promotion efforts at all levels designed to maximize response rates, especially among groups that have historically been undercounted (including measures undertaken in conjunction with local government and community and other groups);

''(iv) establishment and operation of field offices; and

''(v) efforts relating to the recruitment, hiring, and training of enumerators.

''(3) Any data or other information obtained by the Board under this section shall be made available to any committee or subcommittee of Congress of appropriate jurisdiction upon request of the chairman or ranking minority member of such committee or subcommittee. No such committee or subcommittee, or member thereof, shall disclose any information obtained under this paragraph which is submitted to it on a confidential basis unless the full committee determines that the withholding of that information is contrary to the national interest.

''(4) The Board shall study and submit to Congress, as part of its first report under paragraph (1)(A), its findings and recommendations as to the feasibility and desirability of using postal personnel or private contractors to help carry out the decennial census.

''(g) There is authorized to be appropriated $4,000,000 for each of fiscal years 1998 through 2001 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)(1) No individual described in paragraph (2) shall be eligible—

''(A) to be appointed or to continue serving as a member of the Board or as a member of the staff thereof; or

''(B) to enter into any contract with the Board.

''(2) This subsection applies with respect to any individual who is serving or who has ever served—

''(A) as the Director of the Census; or

''(B) with any committee or subcommittee of either House of Congress, having jurisdiction over any aspect of the decennial census, as—

''(i) a Member of Congress; or

''(ii) a congressional employee.

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

Census Data on Grandparents as Primary Caregivers for Their Grandchildren

Pub. L. 104–193, title I, § 105, Aug. 22, 1996, 110 Stat. 2163, provided that:

''(a) In General.—Not later than 90 days after the date of the enactment of this Act [Aug. 22, 1996], the Secretary of Commerce, in carrying out section 141 of title 13, United States Code, shall expand the data collection efforts of the Bureau of the Census (in this section referred to as the 'Bureau') to enable the Bureau to collect statistically significant data, in connection with its decennial census and its mid-decade census, concerning the growing trend of grandparents who are the primary caregivers for their grandchildren.

''(b) Expanded Census Question.—In carrying out subsection (a), the Secretary of Commerce shall expand the Bureau's census question that details households which include both grandparents and their grandchildren. The expanded question shall be formulated to distinguish between the following households:

''(1) A household in which a grandparent temporarily provides a home for a grandchild for a period of weeks or months during periods of parental distress.

''(2) A household in which a grandparent provides a home for a grandchild and serves as the primary caregiver for the grandchild.''

Decennial Census Improvement Act of 1991

Pub. L. 102–135, Oct. 24, 1991, 105 Stat. 635, known as the Decennial Census Improvement Act of 1991, provided that the Secretary of Commerce was to contract with the National Academy of Sciences for a study of the means by which the Government could achieve the most accurate population count possible and ways for the Government to collect other demographic and housing data, and that the Academy was to submit to the Secretary and to committees of Congress an interim report and, within 36 months after the date of the contract, a final report on the study.

Study of Counting of Homeless for National Census

Pub. L. 101–645, title IV, § 402, Nov. 29, 1990, 104 Stat. 4723, provided that not later than 1 year after Nov. 29, 1990, the General Accounting Office was to conduct a study of the methodology and procedures used by the Bureau of the Census in counting the number of homeless persons for the most recent decennial census conducted pursuant to this title, to determine the accuracy of such count, and report to the Congress the results of that study.

Monitoring Economic Progress of Rural America

Pub. L. 101–624, title XXIII, § 2382, Nov. 28, 1990, 104 Stat. 4050, provided that Director of Bureau of the Census was to expand data collection efforts of Bureau to enable it to collect statistically significant data concerning changing economic condition of rural counties and communities in United States, including data on rural employment, poverty, income, and other information concerning rural labor force, and authorized to be appropriated $1,000,000 for each fiscal year for such ef-

forts, prior to repeal by Pub. L. 104–127, title VII, §707, Apr. 4, 1996, 110 Stat. 1112.

AMERICANS OF SPANISH ORIGIN OR DESCENT; STUDY FOR DEVELOPMENT OF CREDITABLE ESTIMATES IN FUTURE CENSUSES

Pub. L. 94–311, §4, June 16, 1976, 90 Stat. 688, provided that: ''The Department of Commerce, in cooperation with appropriate Federal, State and local agencies and various population study groups and experts, shall immediately undertake a study to determine what steps would be necessary for developing creditable estimates of undercounts of Americans of Spanish origin or descent in future censuses.''

NEEDS AND CONCERNS OF SPANISH-ORIGIN POPULATION; USE OF SPANISH LANGUAGE QUESTIONNAIRES AND BILINGUAL ENUMERATORS

Pub. L. 94–311, §5, June 16, 1976, 90 Stat. 689, provided that: ''The Secretary of Commerce shall ensure that, in the Bureau of the Census data-collection activities, the needs and concerns of the Spanish-origin population are given full recognition through the use of Spanish language questionnaires, bilingual enumerators, and other such methods as deemed appropriate by the Secretary.''

[§142. Repealed. Pub. L. 105–113, §3(a), Nov. 21, 1997, 111 Stat. 2275]

Section, acts Aug. 31, 1954, ch. 1158, 68 Stat. 1020; Aug. 28, 1957, Pub. L. 85–207, §10, 71 Stat. 483; Mar. 15, 1976, Pub. L. 94–229, §1, 90 Stat. 210; Oct. 27, 1986, Pub. L. 99–544, §1(a), 100 Stat. 3046, provided that Secretary of Commerce take periodic censuses of agriculture and irrigation.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1998, see section 3(d) of Pub. L. 105–113, set out as an Effective Date of 1997 Amendment note under section 1991 of Title 7, Agriculture.

1997 CENSUS OF AGRICULTURE

Pub. L. 105–86, title I, Nov. 18, 1997, 111 Stat. 2083, provided in part: ''That, notwithstanding any other provision of law, the Secretary of Agriculture shall conduct the 1997 Census of Agriculture, to the extent practicable, pursuant to the provisions of title 13, United States Code.''

[§§143 to 146. Repealed. Pub. L. 85–207, §11, Aug. 28, 1957, 71 Stat. 483]

Sections, act Aug. 31, 1954, ch. 1158, 68 Stat. 1020, related to the following subject matter:

Section 143, decennial census period; completion of reports upon inquiries. See section 141 of this title.

Section 144, restriction on inquiries. See sections 141(a) and 142 of this title.

Section 145, commencement of inquiries as to population, agriculture, and housing; time for completion. See sections 141(a) and 142(a) of this title.

Section 146, mid-decade censuses of agriculture; exclusion of certain areas; preliminary statistics. See sections 142(a), 191, and 193 of this title.

SUBCHAPTER III—GOVERNMENTS

§161. Quinquennial censuses; inclusion of certain data

The Secretary shall take, compile, and publish for the year 1957 and for every fifth year thereafter a census of governments. Each such census shall include, but shall not be limited to, data on taxes and tax valuations, governmental receipts, expenditures, indebtedness, and employees of States, counties, cities, and other governmental units.

(Aug. 31, 1954, ch. 1158, 68 Stat. 1021; Pub. L. 85–207, §12, Aug. 28, 1957, 71 Stat. 483.)

HISTORICAL AND REVISION NOTES

Based on title 13, U.S.C., 1952 ed., §251 (Sept. 7, 1950, ch. 910, §1, 64 Stat. 784).

Section was derived from subsection (a) of section 251 of title 13, U.S.C., 1952 ed. For remainder of such section 251, see Distribution Table.

Reference to the year 1957 was substituted for reference to the year 1952, since the latter reference is now obsolete.

Changes were made in phraseology.

AMENDMENTS

1957—Pub. L. 85–207 struck out ''in the United States and in such of its Territories and possessions as may be determined by the Secretary'' in last sentence. Geographical provisions now covered by section 191 of this title.

[§162. Repealed. Pub. L. 85–207, §13, Aug. 28, 1957, 71 Stat. 483]

Section, act Aug. 31, 1954, ch. 1158, 68 Stat. 1021, related to acquisition of reports and material from governmental units, private persons, and agencies. See section 6(b) of this title.

§163. Authority of other agencies

This subchapter does not revoke or impair the authority of any other Federal agency with respect to the collection or release of information.

(Aug. 31, 1954, ch. 1158, 68 Stat. 1021.)

HISTORICAL AND REVISION NOTES

Based on title 13, U.S.C., 1952 ed., §251 (Sept. 7, 1950, ch. 910, §1, 64 Stat. 784).

Section was derived from part of subsection (b) of section 251 of title 13, U.S.C., 1952 ed. Subsection (a) of such section 251 is also incorporated in this subchapter, and the remainder of such subsection (b) thereof is incorporated in subchapter I of chapter 1 of this title. See Distribution Table.

Changes were made in phraseology.

SUBCHAPTER IV—INTERIM CURRENT DATA

§181. Population

(a) During the intervals between each census of population required under section 141 of this title, the Secretary, to the extent feasible, shall annually produce and publish for each State, county, and local unit of general purpose government which has a population of fifty thousand or more, current data on total population and population characteristics and, to the extent feasible, shall biennially produce and publish for other local units of general purpose government current data on total population. Such data shall be produced and published for each State, county, and other local unit of general purpose government for which data is compiled in the most recent census of population taken under section 141 of this title. Such data may be produced by means of sampling or other methods, which the Secretary determines will produce current, comprehensive, and reliable data.

(b) If the Secretary is unable to produce and publish current data during any fiscal year on total population for any county and local unit of general purpose government as required by this section, a report shall be submitted by the Sec-

retary to the President of the Senate and to the Speaker of the House of Representatives not later than 90 days before the commencement of the following fiscal year, enumerating each government excluded and giving the reasons for such exclusion.

(Added Pub. L. 94–521, § 8(a), Oct. 17, 1976, 90 Stat. 2462.)

CODIFICATION

A prior section 181, act Aug. 31, 1954, ch. 1158, 68 Stat. 1021, authorizing the Secretary to conduct surveys necessary to furnish current data on subjects covered by the censuses under this title, was repealed by section 8(a) of Pub. L. 94–521. See section 182 of this title.

EFFECTIVE DATE

Section effective Oct. 17, 1976, see section 17 of Pub. L. 94–521, set out as a note under section 1 of this title.

§ 182. Surveys

The Secretary may make surveys deemed necessary to furnish annual and other interim current data on the subjects covered by the censuses provided for in this title.

(Added Pub. L. 94–521, § 8(a), Oct. 17, 1976, 90 Stat. 2463.)

EFFECTIVE DATE

Section effective Oct. 17, 1976, see section 17 of Pub. L. 94–521, set out as a note under section 1 of this title.

§ 183. Use of most recent population data

(a) Except as provided in subsection (b), for the purpose of administering any law of the United States in which population or other population characteristics are used to determine the amount of benefit received by State, county, or local units of general purpose government, the Secretary shall transmit to the President for use by the appropriate departments and agencies of the executive branch the data most recently produced and published under this title.

(b) This section shall not apply with respect to any law of the United States which, for purposes of determining the amount of benefit received by State, county, or local units of general purpose government, provides that only population or population characteristics data obtained in the most recent decennial census may be used in such determination.

(Added Pub. L. 94–521, § 8(a), Oct. 17, 1976, 90 Stat. 2463.)

EFFECTIVE DATE

Section effective Oct. 17, 1976, see section 17 of Pub. L. 94–521, set out as a note under section 1 of this title.

§ 184. Definitions

For purposes of this subchapter—

(1) the term ''local unit of general purpose government'' means the government of a county, municipality, township, Indian tribe, Alaskan native village, or other unit of government (other than a State) which is a unit of general government, and

(2) the term ''State'' includes the District of Columbia.

(Added Pub. L. 94–521, § 8(a), Oct. 17, 1976, 90 Stat. 2463.)

EFFECTIVE DATE

Section effective Oct. 17, 1976, see section 17 of Pub. L. 94–521, set out as a note under section 1 of this title.

SUBCHAPTER V—GEOGRAPHIC SCOPE, PRELIMINARY AND SUPPLEMENTAL STATISTICS, AND USE OF SAMPLING

§ 191. Geographic scope of censuses

(a) Each of the censuses authorized by this chapter shall include each State, the District of Columbia, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and the Commonwealth of Puerto Rico, and as may be determined by the Secretary, such other possessions and areas over which the United States exercises jurisdiction, control, or sovereignty. Inclusion of other areas over which the United States exercises jurisdiction or control shall be subject to the concurrence of the Secretary of State.

(b) For censuses taken in the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or any possession or area not specifically designated in subsection (a) of this section, the Secretary may use census information collected by the Governor or highest ranking Federal official, if such information was obtained in accordance with plans prescribed or approved by the Secretary.

(c) If, pursuant to a determination by the Secretary under subsection (a) of this section, any census is not taken in a possession or area over which the United States exercises jurisdiction, control, or sovereignty, the Secretary may include data obtained from other Federal agencies or government sources in the census report. Any data obtained from foreign governments shall be obtained through the Secretary of State.

(Added Pub. L. 85–207, § 14, Aug. 28, 1957, 71 Stat. 483; amended Pub. L. 94–521, § 9, Oct. 17, 1976, 90 Stat. 2463.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–521 struck out ''(other than censuses of population)'' after ''this chapter'' and ''Alaska, Hawaii'' after ''the District of Columbia'', inserted ''the Commonwealth of the Northern Mariana Islands'' after ''Guam'', and struck out provision that censuses of population shall include all geographic areas referred to in first sentence of subsec. (a).

Subsec. (b). Pub. L. 94–521 inserted ''the Commonwealth of the Northern Mariana Islands'' after ''Guam'', and substituted ''use census information'' for ''utilize or adopt census data'' and ''if such information was obtained'' for ''when such data are obtained''.

Subsec. (c). Pub. L. 94–521 substituted ''If, pursuant to a determination by the Secretary under subsection (a) of this section'' for ''When, under determination by the Secretary as provided in paragraph (a) above''.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–521 effective Oct. 17, 1976, see section 17 of Pub. L. 94–521, set out as a note under section 1 of this title.

ADMISSION OF ALASKA AND HAWAII TO STATEHOOD

Alaska was admitted into the Union on Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, and Hawaii was admitted into the Union on Aug. 21, 1959, on issuance of Proc. No. 3309, Aug. 21, 1959, 24 F.R. 6868, 73 Stat. c74. For Alaska Statehood Law, see Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as

a note preceding section 21 of Title 48, Territories and Insular Possessions. For Hawaii Statehood Law, see Pub. L. 86–3, Mar. 18, 1959, 73 Stat. 4, set out as a note preceding section 491 of Title 48.

§ 193. Preliminary and supplemental statistics

In advance of, in conjunction with, or after the taking of each census provided for by this chapter, the Secretary may make surveys and collect such preliminary and supplementary statistics related to the main topic of the census as are necessary to the initiation, taking, or completion thereof.

(Added Pub. L. 85–207, § 14, Aug. 28, 1957, 71 Stat. 484.)

§ 195. Use of sampling

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.

(Added Pub. L. 85–207, § 14, Aug. 28, 1957, 71 Stat. 484; amended Pub. L. 94–521, § 10, Oct. 17, 1976, 90 Stat. 2464.)

AMENDMENTS

1976—Pub. L. 94–521 substituted ''for purposes of apportionment of Representatives in Congress among the several States, the Secretary shall, if he considers it feasible'' for ''for apportionment purposes, the Secretary may, where he deems it appropriate''.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–521 effective Oct. 17, 1976, see section 17 of Pub. L. 94–521, set out as a note under section 1 of this title.

§ 196. Special censuses

The Secretary may conduct special censuses for the government of any State, or of any county, city, or other political subdivision within a State, for the government of the District of Columbia, and for the government of any possession or area (including political subdivisions thereof) referred to in section 191(a) of this title, on subjects covered by the censuses provided for in this title, upon payment to the Secretary of the actual or estimated cost of each such special census. The results of each such special census shall be designated ''Official Census Statistics''. These statistics may be used in the manner provided by applicable law.

(Added Pub. L. 94–521, § 11(a), Oct. 17, 1976, 90 Stat. 2464.)

EFFECTIVE DATE

Section effective Oct. 17, 1976, see section 17 of Pub. L. 94–521, set out as a note under section 1 of this title.

SPECIAL CENSUS WHEN MAJOR POPULATION CHANGES OCCUR DUE TO LARGE NUMBERS OF LEGAL IMMIGRANTS WITHIN SIX MONTHS OF REGULAR DECENNIAL CENSUS DATE

Pub. L. 96–369, § 118, Oct. 1, 1980, 94 Stat. 1357, provided that: ''Notwithstanding any other provision of law, when the President determines that a State, county, or local unit of general purpose government is significantly affected by a major population change due to a large number of legal immigrants within six months of a regular decennial census date, he may order a special census, pursuant to section 196 of title XIII of the United States Code [this section], or other method of obtaining a revised estimate of the population, of such jurisdiction or subsections of that jurisdiction in which the immigrants are concentrated. If the President decides to conduct a special census, it may be conducted solely at Federal expense.''

EXECUTIVE ORDER NO. 12256

Ex. Ord. No. 12256, Dec. 15, 1980, 45 F.R. 83189, which required the Bureau of the Census to supply estimates of the number of legal immigrants within certain jurisdictions, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

CHAPTER 7—OFFENSES AND PENALTIES

SUBCHAPTER I—OFFICERS AND EMPLOYEES

SUBCHAPTER II—OTHER PERSONS

SUBCHAPTER III—PROCEDURE

SUBCHAPTER I—OFFICERS AND EMPLOYEES

§ 211. Receiving or securing compensation for appointment of employees

Whoever—

(1) receives or secures to himself any fee, reward, or compensation as a consideration for the appointment of any person as supervisor, enumerator, clerk, or other officer or employee of the Department of Commerce or bureau or agency thereof, referred to in subchapter II of chapter 1 of this title; or

(2) in any way receives or secures to himself any part of the compensation paid to any person so appointed—

shall be fined not more than $3,000 or imprisoned not more than five years, or both.

(Aug. 31, 1954, ch. 1158, 68 Stat. 1022.)

HISTORICAL AND REVISION NOTES

Based on title 13, U.S.C., 1952 ed., §§ 122, 207, 252, and section 1442 of title 42, U.S.C., 1952 ed., The Public Health and Welfare (June 18, 1929, ch. 28, § 7, 46 Stat. 23; June 19, 1948, ch. 502, § 2, 62 Stat. 479; July 15, 1949, ch. 338, title VI, § 607, 63 Stat. 441; Sept. 7, 1950, ch. 910, § 2, 64 Stat. 784.)

Section consolidates section 207 of title 13, U.S.C., 1952 ed., which was a part of chapter 4 of such title re-

lating to the censuses of population, agriculture, irrigation, etc. (subchapter II of chapter 5 of this revised title), with those parts of sections 122 and 252 of such title which made such section 207 applicable to the censuses of manufactures, the mineral industries, and other businesses, and governments (subchapters I and III of chapter 5 of this revised title), and with that part of subsection (b) of section 1442 of title 42, U.S.C., 1952, ed., which made such section 207 applicable to the censuses of housing (subchapter II of chapter 5 of this revised title). For remainder of sections 122 and 252 of title 13, U.S.C., 1952 ed., and of section 1442 of title 42, U.S.C., 1952 ed. (which section has been transferred in its entirety to this revised title), see Distribution Table.

This section, as revised, relates to appointments of all officers and employees referred to in subchapter II of chapter 1 of this title, which was the probable original legislative intent.

Reference in section 207 of title 13, U.S.C., 1952 ed., to the offense, herein described, as a felony, and words in such section, ''and upon conviction thereof,'' were omitted from this revised section, the former, as covered by section 1 of title 18, U.S.C., 1952 ed., Crimes and Criminal Procedure, classifying offenses, and the latter, as surplusage.

The reference ''Department of Commerce or bureau or agency thereof'' was inserted in recognition of 1950 Reorganization Plan No. 5, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263 (see Revision Note to section 4 of this title). However, the qualifying words, ''referred to in subchapter II of chapter 1 of this title,'' limits the provisions to appointment or employment of persons in connection with the statistics and censuses provided for in this title.

Changes were made in phraseology.

§ 212. Refusal or neglect of employees to perform duties

Whoever, being an employee referred to in subchapter II of chapter 1 of this title, and having taken and subscribed the oath of office, neglects or refuses, without justifiable cause, to perform the duties enjoined on such employee by this title, shall be fined not more than $500.

(Aug. 31, 1954, ch. 1158, 68 Stat. 1022.)

Historical and Revision Notes

Based on title 13, U.S.C., 1952 ed., §§122, 208, 252, and section 1442 of title 42, U.S.C., 1952 ed., The Public Health and Welfare (June 18, 1929, ch. 28, §8, 46 Stat. 23; June 19, 1948, ch. 502, §2, 62 Stat. 479; June 19, 1949, ch. 338, title VI, §607, 63 Stat. 441; Sept. 7, 1950, ch. 910, §2, 64 Stat. 784).

Section consolidates part of section 208 of title 13, U.S.C., 1952 ed., which was a part of chapter 4 of such title relating to the censuses of population, agriculture, etc., with those parts of sections 122 and 252 of such title which made such section 208 applicable to the censuses of manufacturers, the mineral industries and other businesses, and governments, and with that part of subsection (b) of section 1442 of title 42, U.S.C., 1952 ed., which made such section 208 applicable to the housing censuses. For remainder of sections 122, 208 and 252 of title 13, U.S.C., 1952 ed., and of section 1442 of title 42, U.S.C., 1952 ed., (which section has been transferred in its entirety to this revised title), see Distribution Table.

Section has been made applicable to all employees referred to in subchapter II of chapter 1 of this title, and to duties enjoined on them by any provision of this title, which was probably the original legislative intent.

The words ''being an employee referred to in subchapter II of chapter 1 of this title'' were substituted for the enumeration in section 208 of title 13, U.S.C., 1952 ed., of ''supervisor, supervisor's clerk, enumerator, interpreter, special agent, or other employee'', since such reference will cover those employees.

Reference in section 208 of title 13, U.S.C., 1952 ed., to the offense, herein described as a misdemeanor, and words therein '', and upon conviction thereof'', were omitted, the former, as superseded and covered by section 1 of title 18, U.S.C., 1952 ed., Crimes and Criminal Procedure, classifying offenses, and the latter, as surplusage.

Changes were made in phraseology.

§ 213. False statements, certificates, and information

(a) Whoever, being an officer or employee referred to in subchapter II of chapter 1 of this title, willfully and knowingly swears or affirms falsely as to the truth of any statement required to be made or subscribed by him under oath by or under authority of this title, shall be guilty of perjury, and shall be fined not more than $2,000 or imprisoned not more than five years, or both.

(b) Whoever, being an officer or employee referred to in subchapter II of chapter 1 of this title—

(1) willfully and knowingly makes a false certificate or fictitious return; or

(2) knowingly or willfully furnishes or causes to be furnished, or, having been such an officer or employee, knowingly or willfully furnished or caused to be furnished, directly or indirectly, to the Secretary or to any other officer or employee of the Department of Commerce or bureau or agency thereof, any false statement or false information with reference to any inquiry for which he was authorized and required to collect information provided for in this title—

shall be fined not more than $2,000 or imprisoned not more than five years, or both.

(Aug. 31, 1954, ch. 1158, 68 Stat. 1022.)

Historical and Revision Notes

Based on title 13, U.S.C., 1952 ed., §§122, 208, 252, and section 1442 of title 42, U.S.C., 1952 ed., The Public Health and Welfare (June 18, 1929, ch. 28, §8, 46 Stat. 23; June 19, 1948, ch. 502, §2, 62 Stat. 479; July 15, 1949, ch. 338, title VI, §607, 63 Stat. 441; Sept. 7, 1950, ch. 910, §2, 64 Stat. 784).

Section consolidates part of section 208 of title 13, U.S.C., 1952 ed., with that part of section 122 of such title which made such section 208 applicable to the quinquennial censuses of manufacturers, the mineral industries, and other businesses (see subchapter I of chapter 5 of this revised title), that part of section 252 of such title which made such section 208 applicable to the quinquennial censuses of governments (see subchapter III of chapter 5 of this revised title), and that part of subsection (b) of section 1442 of title 42, U.S.C., 1952 ed., which made such section 208 applicable to the decennial censuses of housing (see subchapter II of chapter 5 of this revised title). For remainder of sections 122, 208, and 252 of title 13, U.S.C., 1952 ed., and of section 1442 of title 42, U.S.C., 1952 ed. (which section has been transferred in its entirety to this revised title), see Distribution Table.

As set out in this revised section, the provisions relate to all investigations, surveys, collections of statistics, and censuses provided for in this title, and to officers as well as employees, which was probably the original legislative intent.

References to the offenses described in subsection (b) of this revised section as being felonies, were omitted as covered by section 1 of title 18, U.S.C., 1952 ed.,

Crimes and Criminal Procedure, classifying offenses; and words ''upon conviction thereof'' and ''upon conviction of'' were omitted as surplusage.

Changes were made in phraseology and arrangement.

§ 214. Wrongful disclosure of information

Whoever, being or having been an employee or staff member referred to in subchapter II of chapter 1 of this title, having taken and subscribed the oath of office, or having sworn to observe the limitations imposed by section 9 of this title, or whoever, being or having been a census liaison within the meaning of section 16 of this title, publishes or communicates any information, the disclosure of which is prohibited under the provisions of section 9 of this title, and which comes into his possession by reason of his being employed (or otherwise providing services) under the provisions of this title, shall be fined not more than $5,000 or imprisoned not more than 5 years, or both.

(Aug. 31, 1954, ch. 1158, 68 Stat. 1023; Pub. L. 94–521, § 12(a), Oct. 17, 1976, 90 Stat. 2464; Pub. L. 103–430, § 2(c), Oct. 31, 1994, 108 Stat. 4394.)

HISTORICAL AND REVISION NOTES

Based on title 13, U.S.C., 1952 ed., §§ 73, 83, 122, 208, 252, and section 1442 of title 42, U.S.C., 1952 ed., The Public Health and Welfare (Aug. 7, 1916, ch. 274, § 3, 39 Stat. 437; Apr. 2, 1924, ch. 80, § 3, 43 Stat. 31; June 18, 1929, ch. 28, §§ 8, 21, 46 Stat. 23, 26; July 25, 1947, ch. 331, 61 Stat. 437; June 19, 1948, ch. 502, § 2, 62 Stat. 479; July 15, 1949, ch. 338, title VI, § 607, 63 Stat. 441; Sept. 7, 1950, ch. 910, § 2, 64 Stat. 784).

Section consolidates parts of sections 73, 83 and 208 of title 13, U.S.C., 1952 ed., that part of section 122 of such title which made such section 208 applicable to the quinquennial censuses of manufactures, the mineral industries, and other businesses (see subchapter I of chapter 5 of this revised title), that part of section 252 of such title which made such section 208 applicable to the quinquennial censuses of governments (see subchapter III of chapter 5 of this revised title), and that part of subsection (b) of section 1442 of title 42, U.S.C., 1952 ed., which made such section 208 applicable to the decennial censuses of housing (see subchapter II of chapter 5 of this title).

Words ''Secretary or other authorized officer or employee of the Department of Commerce or bureau or agency thereof'' were substituted for reference to the Director of the Census. See Revision Note to section 9 of this title, into which other parts of sections 73, 83 and 208 of title 13, U.S.C., 1952 ed., have been carried.

The provision in section 208 of title 13, U.S.C., 1952 ed., designating the offense as a felony, was omitted as covered by section 1 of title 18, U.S.C., 1952 ed., Crimes and Criminal Procedure, and words in such section ''upon conviction thereof'' and ''in the discretion of the court'', were omitted as surplusage.

Changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103–430 inserted ''or whoever, being or having been a census liaison within the meaning of section 16 of this title,''.

1976—Pub. L. 94–521 provided that staff members would be liable for wrongful communication of information under this section, inserted ''or having sworn to observe the limitations imposed by section 9 of this title'' after ''oath of office'', substituted a provision predicating liability under this section upon disclosure of information prohibited by section 9 of this title for a former provision predicating such liability upon disclosure of information without the written authority of the Secretary or other authorized officer or employee of the Department of Commerce or bureau or agency thereof, substituted ''being employed (or otherwise providing services)'' for ''employment'', increased maximum amount of fine under this section to $5,000 from $1,000, and increased maximum prison term to 5 years from 2 years.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–521 effective Oct. 17, 1976, see section 17 of Pub. L. 94–521, set out as a note under section 1 of this title.

SUBCHAPTER II—OTHER PERSONS

§ 221. Refusal or neglect to answer questions; false answers

(a) Whoever, being over eighteen years of age, refuses or willfully neglects, when requested by the Secretary, or by any other authorized officer or employee of the Department of Commerce or bureau or agency thereof acting under the instructions of the Secretary or authorized officer, to answer, to the best of his knowledge, any of the questions on any schedule submitted to him in connection with any census or survey provided for by subchapters I, II, IV, and V of chapter 5 of this title, applying to himself or to the family to which he belongs or is related, or to the farm or farms of which he or his family is the occupant, shall be fined not more than $100.

(b) Whoever, when answering questions described in subsection (a) of this section, and under the conditions or circumstances described in such subsection, willfully gives any answer that is false, shall be fined not more than $500.

(c) Notwithstanding any other provision of this title, no person shall be compelled to disclose information relative to his religious beliefs or to membership in a religious body.

(Aug. 31, 1954, ch. 1158, 68 Stat. 1023; Pub. L. 85–207, § 15, Aug. 28, 1957, 71 Stat. 484; Pub. L. 94–521, § 13, Oct. 17, 1976, 90 Stat. 2465.)

HISTORICAL AND REVISION NOTES

Based on title 13, U.S.C., 1952 ed., §§ 122, 209, and section 1442 of title 42, U.S.C., 1952 ed., The Public Health and Welfare (June 18, 1929, ch. 28, § 9, 46 Stat. 23; June 19, 1948, ch. 502, § 2, 62 Stat. 479; July 15, 1949, ch. 338, title VI, § 607, 63 Stat. 441).

Section consolidates the first paragraph of section 209 of title 13, U.S.C., 1952 ed., which section related to the decennial censuses of population, agriculture, etc. (see subchapter II of chapter 5 of this revised title), with that part of section 122 of such title which made such section 209 applicable to the quinquennial censuses of manufactures, the mineral industries, and other businesses (see subchapter I of chapter 5 of this revised title) and applicable to the surveys provided for by section 121(b) of such title (see subchapter IV of chapter 5 of this revised title), and that part of subsection (b) of section 1442 of title 42, U.S.C., 1952 ed., which made such section 209 applicable to the decennial censuses of housing (see subchapter II of chapter 5 of this revised title). For remainder of sections 122 and 209 of title 13, U.S.C., 1952 ed., and of section 1442 of title 42, U.S.C., 1952 ed. (which section has been transferred in its entirety to this revised title), see Distribution Table.

The language of section 209 of title 13, U.S.C., 1952 ed., providing that it should ''be the duty'' of all persons over eighteen years of age, to answer correctly, to the best of their knowledge, when requested, etc., was omitted as unnecessary and redundant. The provisions, as herein revised, define offenses and prescribe penalties for committing them, and are deemed sufficient for the purpose of enforcement. However, some of the language used in the omitted provisions was necessarily included in the description of the offense.

The designation of the first offense, herein described, as a ''misdemeanor'', was omitted as covered by section 1 of title 18, U.S.C., 1952 ed., Crimes and Criminal Procedure, classifying crimes; and words ''upon conviction thereof'' were omitted as surplusage.

References to the Secretary (of Commerce) and to any ''authorized officer or employee of the Department of Commerce or bureau or agency thereof'', etc., were substituted for references to the Director of the Census and to any ''supervisor, enumerator, or special agent, or other employee of the Census Office'', to conform with 1950 Reorganization Plan No. 5, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263. See revision note to section 4 of this title.

Changes were made in phraseology.

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–521, §13(1), struck out provision authorizing imprisonment for not more than sixty days for refusing or willfully neglecting to answer questions under this section.

Subsec. (b). Pub. L. 94–521, §13(2), struck out provision authorizing imprisonment for not more than one year for willfully giving a false answer to a question under this section.

Subsec. (c). Pub. L. 94–521, §13(3), added subsec. (c).

1957—Subsec. (a). Pub. L. 85–207 substituted ''I, II, IV, and V'' for ''I, II, and IV''.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–521 effective Oct. 17, 1976, see section 17 of Pub. L. 94–521, set out as a note under section 1 of this title.

§ 222. Giving suggestions or information with intent to cause inaccurate enumeration of population

Whoever, either directly or indirectly, offers or renders to any officer or employee of the Department of Commerce or bureau or agency thereof engaged in making an enumeration of population under subchapter II, IV, or V of chapter 5 of this title, any suggestion, advice, information or assistance of any kind, with the intent or purpose of causing an inaccurate enumeration of population to be made, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(Aug. 31, 1954, ch. 1158, 68 Stat. 1023; Pub. L. 85–207, §16, Aug. 28, 1957, 71 Stat. 484.)

HISTORICAL AND REVISION NOTES

Based on title 13, U.S.C., 1952 ed., §§122, 209 (June 18, 1929, ch. 28, §9, 46 Stat. 23; June 19, 1948, ch. 502, §2, 62 Stat. 479).

Section consolidates the second paragraph of section 209 of title 13, U.S.C., 1952 ed., which was a part of chapter 4 of that title relating to censuses of population, agriculture, etc., with that part of section 122 of such title which made such section 209 applicable to the interim surveys provided for by section 121(b) of such title (see subchapter IV of chapter 5 of this revised title). For remainder of such sections 122 and 209, see Distribution Table.

Section 122 of title 13, U.S.C., 1952 ed., made section 209 of such title applicable to the quinquennial censuses of manufactures, the mineral industries, and other businesses provided for by section 121(a) thereof (subchapter I of chapter 5 of this revised title), and applicable, with certain qualifications and exceptions, to the interim surveys, which section 121(b) thereof provided for, not only with respect to those censuses but also the censuses provided for in ''other Acts'' (chapter 5 of this title). However, the particular provisions of such section 209 that have been carried into this revised section related only to population enumerations, and this section has accordingly been restricted to the population censuses authorized under subchapter II of chapter 5 of this title, and to the interim surveys authorized under subchapter IV of such chapter only in so far as they relate to population enumerations. The exceptions and qualifications with respect to the application of this section to such interim surveys are set out elsewhere in this subchapter.

Reference to ''any officer or employee'' was substituted for ''any supervisor, supervisor's clerk, enumerator, interpreter, special agent, or other officer or employee'', as the latter enumeration of the types of employees is unnecessary and redundant; and ''Department of Commerce or bureau or agency thereof'' was substituted for ''Census Office'', to conform with 1950 Reorganization Plan No. 5, §§1, 2, effective May 24, 1950, 15 F.R. 3174, 64 Stat. 1263. See Revision Note to section 4 of this title.

Subsection (b) of section 1442 of title 42, U.S.C., 1952 ed., The Public Health and Welfare (which section has been transferred in its entirety to this revised title), made section 209 of title 13, U.S.C., 1952 ed., applicable to the censuses of housing (subchapter II of chapter 5 of this revised title). However, the particular provisions of such section 209 that have been carried into this revised section, could not, by their terms, be relevant to housing censuses, hence no reference is made in this section to such censuses.

Words in section 209 of title 13, U.S.C., 1952 ed., ''either as to the number of persons resident in any district or community, or in any other respect'', were omitted from the revised section as unnecessary and superfluous.

Reference to the offense described as a ''misdemeanor'' was omitted as covered by section 1 of title 18, U.S.C., Crimes and Criminal Procedure, classifying offenses; and words ''and upon conviction thereof'' were omitted as surplusage.

Changes were made in phraseology.

AMENDMENTS

1957—Pub. L. 85–207 substituted ''II, IV, or V'' for ''II or IV''.

§ 223. Refusal, by owners, proprietors, etc., to assist census employees

Whoever, being the owner, proprietor, manager, superintendent, or agent of any hotel, apartment house, boarding or lodging house, tenement, or other building, refuses or willfully neglects, when requested by the Secretary or by any other officer or employee of the Department of Commerce or bureau or agency thereof, acting under the instructions of the Secretary, to furnish the names of the occupants of such premises, or to give free ingress thereto and egress therefrom to any duly accredited representative of such Department or bureau or agency thereof, so as to permit the collection of statistics with respect to any census provided for in subchapters I and II of chapter 5 of this title, or any survey authorized by subchapter IV or V of such chapter insofar as such survey relates to any of the subjects for which censuses are provided by such subchapters I and II, including, when relevant to the census or survey being taken or made, the proper and correct enumeration of all persons having their usual place of abode in such premises, shall be fined not more than $500.

(Aug. 31, 1954, ch. 1158, 68 Stat. 1023; Pub. L. 85–207, §17, Aug. 28, 1957, 71 Stat. 484.)

HISTORICAL AND REVISION NOTES

Based on title 13, U.S.C., 1952 ed., §§122, 209, and section 1442 of title 42, U.S.C., 1952 ed., The Public Health

and Welfare (June 18, 1929, ch. 28, § 9, 46 Stat. 23; June 19, 1948, ch. 502, § 2, 62 Stat. 479; July 15, 1949, ch. 338. title VI, § 607, 63 Stat. 441).

Section consolidates the third paragraph of section 209 of title 13, U.S.C., 1952 ed., which was a part of chapter 4 of that title relating to censuses of population, agriculture, etc. (subchapter II of chapter 5 of this revised title), with that part of section 122 of such title which made such section 209 applicable to the quinquennial censuses of manufactures, the mineral industries, and other businesses provided for by section 121(a) of such title (subchapter I of chapter 5 of this revised title) and, with certain qualifications and exceptions, applicable to the interim surveys provided for by section 121(b) of such title (subchapter IV of chapter 5 of this revised title), and with that part of subsection (b) of section 1442 of title 42, U.S.C., 1952 ed., which made such section 209 applicable to the decennial censuses of housing (subchapter II of chapter 5 of this revised title). For remainder of sections 122 and 209 of this revised title, and of section 1442 of title 42, U.S.C., 1952 ed. (which section has been transferred in its entirety to this revised title), see Distribution Table.

Section 122 of title 13, U.S.C., 1952 ed., made section 209 of such title applicable to the interim surveys (provided for by section 121(b) thereof) not only with respect to the censuses of manufacturers, the mineral industries, and other businesses provided for by section 121(a) thereof, but also with respect to the censuses provided for by ''other Acts'' (chapter 5 of this title). However, section 252 of that title, which was a part of a chapter thereof relating to the quinquennial censuses of governments (subchapter III of chapter 5 of this revised title), in making certain sections of chapter 4 thereof applicable to such censuses, did not specify such section 209. Therefore, this revised section is not made so applicable, either to the censuses of governments provided for in subchapter III of chapter 5 of this title, or to surveys provided for in subchapter IV thereof in so far as such surveys relate to governments.

The language of section 209 of title 13, U.S.C., 1952 ed., providing that it should ''be the duty'' of every owner, proprietor, etc., to furnish the described information or assistance was omitted as unnecessary and redundant. The provisions, as herein revised, define an offense and prescribe a penalty for committing it, and are deemed sufficient for the purpose of enforcement. However, some of the language used in the omitted provisions was necessarily included in the description of the offense.

References to the Secretary (of Commerce) and to ''any other officer or employee of the Department of Commerce or bureau or agency thereof'' were substituted for references to the Director of the Census and the Census Office, to conform with 1950 Reorganization Plan No. 5, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263. See Revision Note to section 4 of this title.

The enumeration of the different types of employees, in section 209 of title 13, U.S.C., 1952 ed., ''supervisor, enumerator,'', etc., was omitted as unnecessary and covered by the reference in this revised section to ''officer or employee''.

Reference in section 209 of title 13, U.S.C., 1952 ed., to the described offense as a ''misdemeanor'' was omitted as covered by section 1 of title 18, U.S.C., 1952 ed., Crimes and Criminal Procedure, classifying offenses, and words in such section ''and upon conviction thereof'' were omitted as surplusage.

Changes were made in phraseology.

The qualifications and exceptions contained in that part of section 122 of title 13, U.S.C., 1952 ed., which made section 209 of such title applicable to the surveys provided for in section 121(b) thereof (subchapter IV of chapter 5 of this revised title), are set out elsewhere in this subchapter.

AMENDMENTS

1957—Pub. L. 85–207 inserted ''or V'' after ''subchapter IV''.

§ 224. Failure to answer questions affecting companies, businesses, religious bodies, and other organizations; false answers

Whoever, being the owner, official, agent, person in charge, or assistant to the person in charge, of any company, business, institution, establishment, religious body, or organization of any nature whatsoever, neglects or refuses, when requested by the Secretary or other authorized officer or employee of the Department of Commerce or bureau or agency thereof, to answer completely and correctly to the best of his knowledge all questions relating to his company, business, institution, establishment, religious body, or other organization, or to records or statistics in his official custody, contained on any census or other schedule or questionnaire prepared and submitted to him under the authority of this title, shall be fined not more than $500; and if he willfully gives a false answer to any such question, he shall be fined not more than $10,000.

(Aug. 31, 1954, ch. 1158, 68 Stat. 1024; Pub. L. 85–207, § 18, Aug. 28, 1957, 71 Stat. 484; Pub. L. 94–521, § 14, Oct. 17, 1976, 90 Stat. 2465.)

HISTORICAL AND REVISION NOTES

Based on title 13, U.S.C., 1952 ed., §§ 74, 84, 122, 210, and section 1442 of title 42, U.S.C., 1952 ed., The Public Health and Welfare (Aug. 7, 1916, ch. 274, § 4, 39 Stat. 437; Apr. 2, 1924, ch. 80, § 4, 43 Stat. 32; June 18, 1929, ch. 28, §§ 10, 21, 46 Stat. 24, 26; June 14, 1938, ch. 358, 52 Stat. 678; July 25, 1947, ch. 331, 61 Stat. 457; June 19, 1948, ch. 502, § 2, 62 Stat. 479; July 15, 1949, ch. 338, title VI, § 607, 63 Stat. 441).

Section consolidates parts of sections 74 and 84 of title 13, U.S.C., 1952 ed., relating to cotton statistics and statistics on oilseeds, nuts and kernels, fats, oils and greases (subchapters I and II of chapter 3 of this revised title), all of section 210 of such title, which section was a part of chapter 4 thereof relating to the decennial censuses of population, agriculture, etc. (subchapter II of chapter 5, of this revised title), with that part of section 122 of such title which made such section 210 applicable to the quinquennial censuses of manufactures, the mineral industries, and other businesses provided for in section 121(a) of such title (subchapter I of chapter 5 of this revised title), and, with certain qualifications and exceptions, applicable to the interim surveys provided for by section 121(b) of such title (subchapter IV of chapter 5 of this revised title), and that part of subsection (b) of section 1442 of title 42, U.S.C., 1952 ed., which made such section 210 applicable to the decennial censuses of housing (subchapter II of chapter 5 of this revised title). For remainder of sections 74, 84 and 122 of title 13, U.S.C., 1952 ed., and of section 1442 of title 42, U.S.C., 1952 ed. (which section has been transferred in its entirety to this revised title), see Distribution Table.

Section 210 of title 13, U.S.C., 1952 ed., by its own terms was applicable to the collection of miscellaneous statistics provided for by section 111 of such title (subchapter III of chapter 3 of this revised title), except that such section 111 placed certain restrictions upon the collection of statistics on religion. These restrictions, along with those of section 122 of such title with respect to the making of surveys, and along with provisions excepting this section from application to the censuses of governments provided for by section 251 of title 13, U.S.C., 1952 ed. (subchapter III of chapter 5 of this revised title), are set out as another section in this revised title. Subject to those exceptions and restrictions, this section applies to all collections and censuses provided for in this title, in so far as it is relevant.

Sections 74, 84 and 210 of title 13, U.S.C., 1952 ed., described the same type of offenses, but the penal provisions varied. Section 74 prescribed maximum fine of $1,000 and maximum imprisonment of one year, for refusal to answer or giving a false answer; section 84 prescribed maximum fine of $1,000 for refusal to answer or giving false answer, with no imprisonment; and section 210 prescribed maximum fine of $500 and maximum imprisonment of sixty days for refusal to answer, and maximum fine of $10,000 and maximum imprisonment of one year for giving a false answer. In addition, such section 74 prescribed a minimum fine of $300 for refusal to answer or giving a false answer. This revised section adopts the penalties of such section 210, which was the latest enactment on the subject, and which might have been regarded as having superseded the penal provisions of such sections 74 and 84. According to its own terms, its penal provisions were applicable not only to the censuses of population, agriculture, etc., provided for in chapter 4 of title 13, U.S.C., 1952 ed., but also to any schedules prepared under the act of March 6, 1902 (sections 1–6, 77, 101, 111, and 112 of such title), or under acts amendatory thereof ''or supplemental thereto.'' This reference did not cover sections 74 and 84 specifically, but such sections, enacted in 1924 and 1916, respectively, could probably be regarded as having been ''supplemental'' to the 1902 act. In any event, this revised section establishes uniform penalties for refusal to answer, or giving a false answer in the circumstances stated. Further, the prescribed penalties are the maximum, and any lesser penalty can be imposed if the facts of the case warrant it.

Reference to the ''Secretary [of Commerce] or other authorized officer or employee of the Department of Commerce or bureau or agency thereof'' was substituted for references to the Director of the Census and employees of the Bureau of the Census, to conform with 1950 Reorganization Plan No. 5, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263. See Revision Note to section 4 of this title.

References to the offenses as being in each case a ''misdemeanor'' were omitted as covered by section 1 of title 18, U.S.C., 1952 ed., Crimes and Criminal Procedure, classifying crimes; and words ''upon conviction thereof'' and ''at the discretion of the court'' were omitted as surplusage.

The provision permitting the requests to be made by registered mail, by telegraph, by visiting representative, or by one or more of these methods, was contained in sections 74 and 84 of title 13, U.S.C., 1952 ed., but not in section 210 of such title. It is retained in this section as probably a desirable provision to apply generally.

Provisions in sections 74, 84 and 210 of title 13, U.S.C., 1952 ed., that it ''shall be the duty'' of the persons referred to, to answer correctly, etc., were omitted as unnecessary and redundant. This section defines offenses and prescribes penalties for committing them, and are deemed sufficient for the purpose of enforcement. However, some of the language used in the omitted provisions was necessarily included in the description of the offenses.

Changes were made in phraseology.

AMENDMENTS

1976—Pub. L. 94–521 struck out provision enumerating methods by which the Department of Commerce may transmit a request to answer census questions under this section, substituted ''schedule or questionnaire'' for ''schedule'', struck out provision authorizing a sixty day maximum prison term for neglecting or refusing to answer census questions submitted under this section and a similar provision authorizing a one year maximum prison term for willfully giving a false answer to any such questions.

1957—Pub. L. 85–207 inserted ''by certified mail,'' after ''by registered mail,''.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–521 effective Oct. 17, 1976, see section 17 of Pub. L. 94–521, set out as a note under section 1 of this title.

§ 225. Applicability of penal provisions in certain cases

(a) In connection with any survey conducted by the Secretary or other authorized officer or employee of the Department of Commerce or bureau or agency thereof pursuant to subchapter IV of chapter 5 of this title, the provisions of sections 221, 222, 223 and 224 of this title shall apply—

(1) with respect to the answering of questions and furnishing of information, only to such inquiries as are within the scope of the schedules and questionnaires and of the type and character heretofore used in connection with the taking of complete censuses under subchapters I and II of chapter 5 of this title, or in connection with any censuses hereafter taken pursuant to such subchapters;

(2) only after publication of a determination with reasons therefor certified by the Secretary, or by some other authorized officer or employee of the Department of Commerce or bureau or agency thereof with the approval of the Secretary, that the information called for is needed to aid or permit the efficient performance of essential governmental functions or services, or has significant application to the needs of the public, business, or industry and is not publicly available from nongovernmental or other governmental sources;

(3) in the case of any new survey, only after public notice, given by the Secretary or other authorized officer or employee of the Department of Commerce or bureau or agency thereof at least thirty days in advance of requesting a return, that such survey is under consideration.

(b) The provisions for imprisonment provided by section 222 of this title shall not apply in connection with any survey conducted pursuant to subchapter II of chapter 3 of this title, or to subchapter IV of chapter 5 of this title.

(c) The provisions of sections 221, 222, 223, and 224 of this title shall not apply to any censuses or surveys of governments provided for by subchapters III and IV of chapter 5 of this title, nor to other surveys provided for by subchapter IV of such chapter which are taken more frequently than annually.

(d) Where the doctrine, teaching, or discipline of any religious denomination or church prohibits the disclosure of information relative to membership, a refusal, in such circumstances, to furnish such information shall not be an offense under this chapter.

(Aug. 31, 1954, ch. 1158, 68 Stat. 1024; Pub. L. 94–521, §15(a), Oct. 17, 1976, 90 Stat. 2465.)

HISTORICAL AND REVISION NOTES

Based on title 13, U.S.C., 1952 ed., §§111, 122 (Mar. 2, 1902, ch. 139, §7, 32 Stat. 52; June 7, 1906, ch. 3048, 34 Stat. 218; June 18, 1929, ch. 28, §3, 46 Stat. 26; 1939 Reorg. Plan No. II, §4(e), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1431; 1940 Reorg. Plan No. III, §3, eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1232; June 25, 1947, ch. 124, 61 Stat. 163; June 19, 1948, ch. 502, §1, 62 Stat. 478; Sept. 7, 1950, ch. 910, §4, 64 Stat. 785).

Section consolidates parts of sections 111 and 122 of title 13, U.S.C., 1952 ed., with changes in phraseology necessary to effect consolidation and to preserve the intent, scope and meaning of the parts of such sections

so consolidated. For remainder of such sections 111 and 122, see Distribution Table.

Subsections (a) and (b) of this revised section are from section 122 of title 13, U.S.C., 1952 ed., and in subsection (a) references to the Secretary (of Commerce) and to ''other authorized officer or employee of the Department of Commerce or bureau or agency thereof'' were substituted for references to the Director of the Census to conform with 1950 Reorganization Plan No. 5, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263. See Revision Note to section 4 of this title.

Subsection (c) is partly new (but preserves existing law), and partly from section 122 of title 13, U.S.C., 1952 ed. Section 252 of title 13, U.S.C., 1952 ed., which related to the censuses of governments provided by section 251 thereof (see subchapter III of chapter 5 of this title), made certain sections in chapter 4 of that title relating to censuses of population, agriculture, etc., applicable to such censuses of governments. However, it did not list sections 209 and 210 of such title among the sections made so applicable, probably because they would hardly be relevant and capable of application to such censuses. Subsection (c) makes it clear that sections 221–224 of this revised title, into which were carried the provisions of such sections 209 and 210, and which speak in general terms, are not applicable to the censuses and surveys of governments.

Subsection (d) is from section 111 of title 13, U.S.C., 1952 ed. Words in this subsection, ''a refusal, in such circumstances, to furnish such information shall not be an offense under this chapter'', read ''such information shall not be required''. It was felt that such exception in such section 111 was actually more in the nature of an exception to the penal provisions, and it has been so treated in this revised title. The collection of statistics on religion are provided for in section 102 of this title.

AMENDMENTS

1976—Subsec. (a)(1). Pub. L. 94–521, §15(a)(1), inserted ''and questionnaires'' after ''schedules''.

Subsec. (b). Pub. L. 94–521, §15(a)(2), struck out reference to imprisonment provisions provided by sections 221 and 224 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–521 effective Oct. 17, 1976, see section 17 of Pub. L. 94–521, set out as a note under section 1 of this title.

SUBCHAPTER III—PROCEDURE

§ 241. Evidence

When any request for information, made by the Secretary or other authorized officer or employee of the Department of Commerce or bureau or agency thereof, is made by registered or certified mail or telegram, the return receipt therefor or other written receipt thereof shall be prima facie evidence of an official request in any prosecution under such section.

(Aug. 31, 1954, ch. 1158, 68 Stat. 1025; Pub. L. 85–207, §19, Aug. 28, 1957, 71 Stat. 484; Pub. L. 94–521, §15(b), Oct. 17, 1976, 90 Stat. 2465.)

HISTORICAL AND REVISION NOTES

Based on title 13, U.S.C., 1952 ed., §§74, 84 (Aug. 7, 1916, ch. 274, §4, 39 Stat. 437; Apr. 2, 1924, ch. 80, §4, 43 Stat. 32; June 18, 1929, ch. 28, §21, 46 Stat. 26; June 14, 1938, ch. 358, 52 Stat. 678; July 25, 1947, ch. 331, 61 Stat. 457).

Section consolidates part of section 74 of title 13, U.S.C., 1952 ed., which section related to the collection of cotton statistics, with part of section 84 of such title, which section related to the collection of statistics on oilseeds, nuts and kernels, fats, oils and greases. For remainder of such sections 74 and 84, see Distribution Table.

Section 74 of title 13, U.S.C., 1952 ed., authorized the making of requests for information by registered mail, and provided that, if so made, the registry receipt should be ''accepted as evidence of such demand''. Section 84 thereof authorized the making of requests by registered mail, or ''by telegraph'', and provided that, if so made, the ''return'' receipt therefor should be ''prima facie evidence of an official request''. The authorizations contained in such sections have been carried into section 224 of this title, and the evidentiary provisions thereof have been carried into this section, and they apply to investigations other than those to which such sections 74 and 84 related. See Revision Note to section 224 of this title.

In this revised section, the language of section 84 of title 13, U.S.C., 1952 ed., was largely followed as probably being the more desirable, but ''or other written receipt thereof'' was inserted since there is no return receipt with respect to a telegram, and words ''in any prosecution under such section'' were inserted for the purpose of completeness.

Further, words ''Secretary or other authorized officer or employee of the Department of Commerce or bureau or agency thereof'' were substituted for references to the Director of the Census, to conform with 1950 Reorganization Plan No. 5, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263. See Revision Note to section 4 of this title.

Changes were made in phraseology.

AMENDMENTS

1976—Pub. L. 94–521 struck out ''as authorized by section 224 of this title'' after ''telegram''.

1957—Pub. L. 85–207 inserted ''or certified'' after ''registered''.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–521 effective Oct. 17, 1976, see section 17 of Pub. L. 94–521, set out as a note under section 1 of this title.

CHAPTER 9—COLLECTION AND PUBLICATION OF FOREIGN COMMERCE AND TRADE STATISTICS

AMENDMENTS

2002—Pub. L. 107–228, div. B, title XIV, §1404(f)(2), Sept. 30, 2002, 116 Stat. 1456, added item 305 and struck out former item 305 ''Violations, penalties''.

§ 301. Collection and publication

(a) The Secretary is authorized to collect information from all persons exporting from, or importing into, the United States and the noncontiguous areas over which the United States exercises sovereignty, jurisdiction, or control, and from all persons engaged in trade between the United States and such noncontiguous areas and between those areas, or from the owners, or operators of carriers engaged in such foreign commerce or trade, and shall compile and publish such information pertaining to exports, imports, trade, and transportation relating thereto, as he deems necessary or appropriate to enable him to foster, promote, develop, and further

[1] So in original. Does not conform to section catchline.

the commerce, domestic and foreign, of the United States and for other lawful purposes.

(b) The Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, on quarterly and cumulative bases, statistics on United States imports for consumption and United States exports by country and by product. Statistics on United States imports shall be submitted in accordance with the Harmonized Tariff Schedule of the United States Annotated for Statistical Reporting Purposes and general statistical note 1 thereof, in detail as follows:

(1) net quantity;

(2) United States customs value;

(3) purchase price or its equivalent;

(4) equivalent of arm's length value;

(5) aggregate cost from port of exportation to United States port of entry;

(6) a United States port of entry value comprised of (5) plus (4), if applicable, or, if not applicable, (5) plus (3); and

(7) for transactions where (3) and (4) are equal, the total value of such transactions.

The data for paragraphs (1), (2), (3), (5), and (6) shall be reported separately for nonrelated and related party transactions, and shall also be reported as a total of all transactions.

(c) In submitting any information under subsection (b) with respect to exports, the Secretary shall state separately from the total value of all exports—

(1)(A) the value of agricultural commodities exported under the Agricultural Trade Development and Assistance Act of 1954, as amended; and

(B) the total amount of all export subsidies paid to exporters by the United States under such Act for the exportation of such commodities; and

(2) the value of goods exported under the Foreign Assistance Act of 1961.

(d) To assist the Secretary to carry out the provisions of subsections (b) and (c)—

(1) the Secretary of Agriculture shall furnish information to the Secretary concerning the value of agricultural commodities exported under provisions of the Agricultural Trade Development and Assistance Act of 1954, as amended, and the total amounts of all export subsidies paid to exporters by the United States under such Act for the exportation of such commodities; and

(2) the Secretary of State shall furnish information to the Secretary concerning the value of goods exported under the provisions of the Foreign Assistance Act of 1961, as amended.

(e) There shall be reported, on monthly and cumulative bases, for each heading or subheading in the Harmonized Tariff Schedule of the United States Annotated for Statistical Reporting Purposes, the United States port of entry value (as determined under subsection (b)(6)). There shall be reported, on monthly and cumulative bases, the balance of international trade for the United States reflecting (1) the aggregate value of all United States imports as reported in accordance with the first sentence of this subsection, and (2) the aggregate value of all United States exports. The information required to be reported under this subsection shall be reported in a form that is adjusted for economic inflation or deflation (on a constant dollar basis consistent with the reporting of the National Income and Product Accounts), and in a form that is not so adjusted.

(f) On or before January 1, 1981, and as often thereafter as may be necessary to reflect significant changes in rates, there shall be reported for each heading or subheading in the Harmonized Tariff Schedule of the United States Annotated for Statistical Reporting Purposes, the ad valorem or ad valorem equivalent rate of duty which would have been required to be imposed on dutiable imports under that heading or subheading, if the United States customs values of such imports were based on the United States port of entry value (as reported in accordance with the first sentence of subsection (e)) in order to collect the same amount of duties on imports under that heading or subheading as are currently collected.

(g) Shippers' Export Declarations (or any successor document), wherever located, shall be exempt from public disclosure unless the Secretary determines that such exemption would be contrary to the national interest.

(h) The Secretary is authorized to require by regulation the filing of Shippers' Export Declarations under this chapter through an automated and electronic system for the filing of export information established by the Department of the Treasury.

(Added Pub. L. 87–826, § 2, Oct. 15, 1962, 76 Stat. 951; amended Pub. L. 93–618, title VI, § 609(a), Jan. 3, 1975, 88 Stat. 2074; Pub. L. 96–39, title XI, § 1108(a), July 26, 1979, 93 Stat. 313; Pub. L. 96–275, § 1, June 17, 1980, 94 Stat. 539; Pub. L. 100–418, title I, §§ 1214(a)(2), 1931(a), 1932, Aug. 23, 1988, 102 Stat. 1155, 1320; Pub. L. 106–113, div. B, § 1000(a)(7) [div. B, title XII, § 1252(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–506.)

References in Text

The Harmonized Tariff Schedule of the United States, referred to in subsecs. (b), (e), and (f), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of Title 19, Customs Duties.

The Agricultural Trade Development and Assistance Act of 1954, referred to in subsecs. (c)(1), (d)(1), is act July 10, 1954, ch. 649, 68 Stat. 454, as amended, which is classified generally to chapter 41 (§ 1691 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1691 of Title 7 and Tables.

The Foreign Assistance Act of 1961, referred to in subsecs. (c)(2), (d)(2), is Pub. L. 87–195, Sept. 4, 1961, 75 Stat. 424, as amended, which is classified principally to chapter 32 (§ 2151 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of Title 22 and Tables.

Amendments

1999—Subsec. (h). Pub. L. 106–113 added subsec. (h).

1988—Subsec. (b). Pub. L. 100–418, § 1214(a)(2)(A), substituted "Harmonized Tariff Schedule of the United States Annotated for Statistical Reporting Purposes and general statistical note 1 thereof" for "Tariff Schedules of the United States Annotated and general statistical headnote 1 thereof".

Subsec. (e). Pub. L. 100–418, §1932, inserted at end ''The information required to be reported under this subsection shall be reported in a form that is adjusted for economic inflation or deflation (on a constant dollar basis consistent with the reporting of the National Income and Product Accounts), and in a form that is not so adjusted.''

Pub. L. 100–418, §1931(a), struck out at end ''The values and balance of trade required to be reported by this subsection shall be released no later than 48 hours before the release of any other government statistics concerning values of United States imports or United States balance of trade, or statistics from which such values or balance may be derived.''

Pub. L. 100–418, §1214(a)(2)(B), substituted ''heading or subheading in the Harmonized Tariff Schedule of the United States Annotated for Statistical Reporting Purposes'' for ''item in the Tariff Schedules of the United States Annotated'' in first sentence.

Subsec. (f). Pub. L. 100–418, §1214(a)(2)(C), substituted ''heading or subheading in the Harmonized Tariff Schedule of the United States Annotated for Statistical Reporting Purposes'' for ''item of the Tariff Schedules of the United States Annotated'' and ''under that heading or subheading'' for ''under that item'', in two places.

1980—Subsec. (g). Pub. L. 96–275 added subsec. (g).

1979—Subsecs. (e), (f). Pub. L. 96–39 added subsecs. (e) and (f).

1975—Pub. L. 93–618 designated existing provisions as subsec. (a) and added subsecs. (b) to (d).

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, §1000(a)(7) [div. B, title XII, §1252(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–506, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect 270 days after the Secretary of Commerce, the Secretary of the Treasury, and the Director of the National Institute of Standards and Technology jointly provide a certification to the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives that a secure Automated Export System available through the Internet that is capable of handling the expected volume of information required to be filed under subsection (b) [set out below], plus the anticipated volume from voluntary use of the Automated Export System, has been successfully implemented and tested and is fully functional with respect to reporting all items on the United States Munitions List, including their quantities and destinations.'' [The Automated Export System Certification Report was submitted to the Committee on Foreign Relations of the Senate on June 11, 2001, and to the Committee on International Relations of the House of Representatives on May 31, 2001. See 66 F.R. 39006.]

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1214(a)(2) of Pub. L. 100–418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(b)(1) of Pub. L. 100–418, set out as an Effective Date note under section 3001 of Title 19, Customs Duties.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 4 of Pub. L. 96–275 provided that:

''(a) Except as provided in subsection (b), this Act, and the amendments made by this Act [amending this section and enacting provisions set out as a note under this section], shall become effective on the later of July 1, 1980, or the date of enactment of this Act [June 17, 1980].

''(b) The amendment made by section 2 [amending section 93 of former Title 46, Shipping] shall become effective on the date which is forty-five days after the date of enactment of this Act [June 17, 1980].''

EFFECTIVE DATE OF 1979 AMENDMENT

Section 1108(b) of Pub. L. 96–39 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to reports made after December 31, 1979.''

EFFECTIVE DATE OF 1975 AMENDMENT

Section 609(b) of Pub. L. 93–618 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on January 1, 1975.''

EFFECTIVE DATE

Section 4 of Pub. L. 87–826 provided that: ''The provisions of this Act [enacting section 301 et seq. of this title and repealing sections 173, 174, 177, 179, 181, 184 to 187, and 193 of Title 15, Commerce and Trade, sections 92 and 95 of former Title 46, Shipping, and section 1486 of Title 48, Territories and Insular Possessions] shall take effect one hundred and eighty days after approval [Oct. 15, 1962], except that the last sentence of section 337, ''Fifth'' of the Revised Statutes [section 174 of Title 15], and the requirement for oaths as found in section 4200 of the Revised Statutes [section 92 of former Title 46] shall be repealed effective on the date this Act is approved [Oct. 15, 1962].''

REGULATIONS

Pub. L. 106–113, div. B, §1000(a)(7) [div. B, title XII, §1252(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–506, provided that:

''(1) IN GENERAL.—The Secretary of Commerce, with the concurrence of the Secretary of State, shall publish regulations in the Federal Register to require that, upon the effective date of those regulations, exporters (or their agents) who are required to file Shippers' Export Declarations under chapter 9 of title 13, United States Code, file such Declarations through the Automated Export System with respect to exports of items on the United States Munitions List or the Commerce Control List.

''(2) ELEMENTS OF THE REGULATIONS.—The regulations referred to in paragraph (1) shall include at a minimum—

''(A) provision by the Department of Commerce for the establishment of on-line assistance services to be available for those individuals who must use the Automated Export System;

''(B) provision by the Department of Commerce for ensuring that an individual who is required to use the Automated Export System is able to print out from the System a validated record of the individual's submission, including the date of the submission and a serial number or other unique identifier, where appropriate, for the export transaction; and

''(C) a requirement that the Department of Commerce print out and maintain on file a paper copy or other acceptable back-up record of the individual's submission at a location selected by the Secretary of Commerce.''

IMPROVEMENTS TO THE AUTOMATED EXPORT SYSTEM

Pub. L. 107–228, div. B, title XIV, §1404(a)–(c), Sept. 30, 2002, 116 Stat. 1454, provided that:

''(a) CONTRIBUTION TO THE AUTOMATED EXPORT SYSTEM.—Of the amount provided under section 1402 of this Act [116 Stat. 1453], $250,000 is authorized to be available for the purpose of—

''(1) providing the Department [of State] with full access to the Automated Export System;

''(2) ensuring that the system is modified to meet the needs of the Department [of State], if such modifications are consistent with the needs of other United States Government agencies; and

''(3) providing operational support.

''(b) MANDATORY FILING.—The Secretary of Commerce, with the concurrence of the Secretary of State and the Secretary of [the] Treasury, shall publish regulations in the Federal Register to require, upon the effective date of those regulations, that all persons who are required to file export information under chapter 9 of title 13, United States Code, file such information through the Automated Export System.

''(c) REQUIREMENT FOR INFORMATION SHARING.—The Secretary [of State] shall conclude an information-sharing arrangement with the heads of the United States Customs Service and the Census Bureau—

''(1) to allow the Department [of State] to access information on controlled exports made through the United States Postal Service; and

''(2) to adjust the Automated Export System to parallel information currently collected by the Department.''

[For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

VOLUMETRIC INDEX

Section 1931(b) of Pub. L. 100–418 provided that:

''(1) The Director of the Census, in consultation with the Director of the Bureau of Economic Analysis and the Commissioner of Labor Statistics, shall conduct a study to determine the feasibility of developing, and of publishing, an index that measures the real volume of merchandise trade on a monthly basis, which would be reported simultaneously with the balance of merchandise trade for the United States.

''(2) The Director of the Census shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report on the study conducted under paragraph (1) by no later than the date that is one year after the date of enactment of this Act [Aug. 23, 1988].''

CONGRESSIONAL ACCESS TO INFORMATION

Section 3 of Pub. L. 96–275 provided that: ''Nothing in this Act [enacting subsec. (g) of this section, amending section 93 of former Title 46, Shipping, and enacting provisions set out as notes under this section] shall be construed as authorizing the withholding of information from Congress.''

DEFINITIONS

Pub. L. 106–113, div. B, § 1000(a)(7) [div. B, title XII, subtitle E, § 1256], Nov. 29, 1999, 113 Stat. 1536, 1501A–507, provided that: ''In this subtitle [amending this section and enacting provisions set out as notes above]:

''(1) AUTOMATED EXPORT SYSTEM.—The term 'Automated Export System' means the automated and electronic system for filing export information established under chapter 9 of title 13, United States Code, on June 19, 1995 (60 Federal Register 32040).

''(2) COMMERCE CONTROL LIST.—The term 'Commerce Control List' has the meaning given the term in section 774.1 of title 15, Code of Federal Regulations.

''(3) SHIPPERS' EXPORT DECLARATION.—The term 'Shippers' Export Declaration' means the export information filed under chapter 9 of title 13, United States Code, as described in part 30 of title 15, Code of Federal Regulations.

''(4) UNITED STATES MUNITIONS LIST.—The term 'United States Munitions List' means the list of items controlled under section 38 of the Arms Export Control Act (22 U.S.C. 2778).''

§ 302. Rules, regulations, and orders

The Secretary may make such rules, regulations, and orders as he deems necessary or appropriate to carry out the provisions of this chapter. Any rules, regulations, or orders issued pursuant to this authority may be established in such form or manner, may contain such classifications or differentiations, and may provide for such adjustments and reasonable exceptions as in the judgment of the Secretary are necessary or proper to effectuate the purpose of this chapter, or to prevent circumvention or evasion of any rule, regulation, or order issued hereunder. The Secretary may also provide by rule or regulation, for such confidentiality, publication, or disclosure, of information collected hereunder as he may deem necessary or appropriate in the public interest. Rules, regulations, and orders, or amendments thereto shall have the concurrence of the Secretary of the Treasury prior to promulgation.

(Added Pub. L. 87–826, § 2, Oct. 15, 1962, 76 Stat. 951.)

§ 303. Secretary of Treasury functions

To assist the Secretary to carry out the provisions of this chapter, the Secretary of the Treasury shall collect information in the form and manner prescribed by the regulations issued pursuant to this chapter from persons engaged in foreign commerce or trade and from the owners or operators of carriers.

(Added Pub. L. 87–826, § 2, Oct. 15, 1962, 76 Stat. 951; amended Pub. L. 107–228, div. B, title XIV, § 1404(d), Sept. 30, 2002, 116 Stat. 1454.)

AMENDMENTS

2002—Pub. L. 107–228 struck out '', other than by mail,'' after ''foreign commerce or trade''.

§ 304. Filing export information, delayed filings, penalties for failure to file

(a) The information or reports in connection with the exportation or transportation of cargo required to be filed by carriers with the Secretary of the Treasury under any rule, regulation, or order issued pursuant to this chapter may be filed after the departure of such carrier from the port or place of exportation or transportation, whether such departing carrier is destined directly to a foreign port or place or to a noncontiguous area, or proceeds by way of other ports or places of the United States, provided that a bond in an approved form in a penal sum of $10,000 is filed with the Secretary of the Treasury. The Secretary of Commerce may, by a rule, regulation, or order issued in conformity herewith, prescribe a maximum period after such departure during which the required information or reports may be filed. In the event any such information or report is not filed within such prescribed period, a penalty not to exceed $1,000 for each day's delinquency beyond the prescribed period, but not more than $10,000 per violation shall be exacted. Civil suit may be instituted in the name of the United States against the principal and surety for the recovery of any penalties that may accrue and be exacted in accordance with the terms of the bond.

(b) Any person, other than a person described in subsection (a), required to submit export information, shall file such information in accordance with any rule, regulation, or order issued pursuant to this chapter. In the event any such information or reports are not filed within such prescribed period, the Secretary of Commerce (and officers of the Department of Commerce specifically designated by the Secretary) may impose a civil penalty not to exceed $1,000 for

each day's delinquency beyond the prescribed period, but not more than $10,000 per violation.

(c) The Secretary may remit or mitigate any penalty incurred for violations of this section and regulations issued pursuant thereto if, in his opinion, they were incurred without willful negligence or fraud, or other circumstances justify a remission or mitigation.

(Added Pub. L. 87–826, § 2, Oct. 15, 1962, 76 Stat. 952; amended Pub. L. 107–228, div. B, title XIV, § 1404(e), Sept. 30, 2002, 116 Stat. 1454.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–228, § 1404(e)(1), substituted ''a penal sum of $10,000'' for ''the penal sum of $1,000'' in first sentence and ''a penalty not to exceed $1,000 for each day's delinquency beyond the prescribed period, but not more than $10,000 per violation'' for ''a penalty not to exceed $100 for each day's delinquency beyond the prescribed period, but not more than $1,000,'' in third sentence.

Subsecs. (b), (c). Pub. L. 107–228, § 1404(e)(2), (3), added subsec. (b) and redesignated former subsec. (b) as (c).

§ 305. Penalties for unlawful export information activities

(a) CRIMINAL PENALTIES.—

(1) FAILURE TO FILE; SUBMISSION OF FALSE OR MISLEADING INFORMATION.—Any person who knowingly fails to file or knowingly submits false or misleading export information through the Shippers Export Declaration (SED) (or any successor document) or the Automated Export System (AES) shall be subject to a fine not to exceed $10,000 per violation or imprisonment for not more than 5 years, or both.

(2) FURTHERANCE OF ILLEGAL ACTIVITIES.—Any person who knowingly reports any information on or uses the SED or the AES to further any illegal activity shall be subject to a fine not to exceed $10,000 per violation or imprisonment for not more than 5 years, or both.

(3) FORFEITURE PENALTIES.—Any person who is convicted under this subsection shall, in addition to any other penalty, be subject to forfeiting to the United States—

(A) any of that person's interest in, security of, claim against, or property or contractual rights of any kind in the goods or tangible items that were the subject of the violation;

(B) any of that person's interest in, security of, claim against, or property or contractual rights of any kind in tangible property that was used in the export or attempt to export that was the subject of the violation; and

(C) any of that person's property constituting, or derived from, any proceeds obtained directly or indirectly as a result of the violation.

(b) CIVIL PENALTIES.—The Secretary (and officers of the Department of Commerce specifically designated by the Secretary) may impose a civil penalty not to exceed $10,000 per violation on any person violating the provisions of this chapter or any rule, regulation, or order issued thereunder, except as provided in section 304. Such penalty may be in addition to any other penalty imposed by law.

(c) CIVIL PENALTY PROCEDURE.—

(1) IN GENERAL.—Whenever a civil penalty is sought for a violation of this section or of section 304, the charged party is entitled to receive a formal complaint specifying the charges and, at his or her request, to contest the charges in a hearing before an administrative law judge. Any such hearing shall be conducted in accordance with sections 556 and 557 of title 5, United States Code.

(2) COMMENCEMENT OF CIVIL ACTIONS.—If any person fails to pay a civil penalty imposed under this chapter, the Secretary may request the Attorney General to commence a civil action in an appropriate district court of the United States to recover the amount imposed (plus interest at currently prevailing rates from the date of the final order). No such action may be commenced more than 5 years after the date the order imposing the civil penalty becomes final. In such action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

(3) REMISSION OR MITIGATION OF PENALTIES.—The Secretary may remit or mitigate any penalties imposed under paragraph (1) if, in the Secretary's opinion—

(A) the penalties were incurred without willful negligence or fraud; or

(B) other circumstances exist that justify a remission or mitigation.

(4) APPLICABLE LAW FOR DELEGATED FUNCTIONS.—If, pursuant to section 306, the Secretary delegates functions under this section to another agency, the provisions of law of that agency relating to penalty assessment, remission or mitigation of such penalties, collection of such penalties, and limitations of actions and compromise of claims, shall apply.

(5) DEPOSIT OF PAYMENTS IN GENERAL FUND OF THE TREASURY.—Any amount paid in satisfaction of a civil penalty imposed under this section or section 304 shall be deposited into the general fund of the Treasury and credited as miscellaneous receipts.

(d) ENFORCEMENT.—

(1) BY THE SECRETARY OF COMMERCE.—The Secretary of Commerce may designate officers or employees of the Office of Export Enforcement to conduct investigations pursuant to this chapter. In conducting such investigations, those officers or employees may, to the extent necessary or appropriate to the enforcement of this chapter, exercise such authorities as are conferred upon them by other laws of the United States, subject to policies and procedures approved by the Attorney General.

(2) BY THE COMMISSIONER OF CUSTOMS.—The Commissioner of Customs may designate officers or employees of the Customs Service to enforce the provisions of this chapter, or to conduct investigations pursuant to this chapter.

(e) REGULATIONS.—The Secretary of Commerce shall promulgate regulations for the implementation and enforcement of this section.

(f) EXEMPTION.—The criminal fines provided for in this section are exempt from the provisions of section 3571 of title 18, United States Code.

(Added Pub. L. 87–826, § 2, Oct. 15, 1962, 76 Stat. 952; amended Pub. L. 107–228, div. B, title XIV, § 1404(f)(1), Sept. 30, 2002, 116 Stat. 1455.)

AMENDMENTS

2002—Pub. L. 107–228 substituted ''Penalties for unlawful export information activities'' for ''Violations, penalties'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''Any person, including the owners or operators of carriers, violating the provisions of this chapter, or any rule, regulation, or order issued thereunder, except as provided in section 304 above, shall be liable to a penalty not to exceed $1,000 in addition to any other penalty imposed by law. The amount of any such penalty shall be payable into the Treasury of the United States and shall be recoverable in a civil suit in the name of the United States.''

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 306. Delegation of functions

Subject to the concurrence of the head of the department or agency concerned, the Secretary may make such provisions as he shall deem appropriate, authorizing the performance by any officer, agency, or employee of the United States Government departments or offices, or the governments of any areas over which the United States exercises sovereignty, jurisdiction, or control, of any function of the Secretary, contained in this chapter.

(Added Pub. L. 87–826, § 2, Oct. 15, 1962, 76 Stat. 952.)

§ 307. Relationship to general census law

The following sections only, 1, 2, 3, 4, 5, 6, 7, 11, 21, 22, 23, 24, 211, 212, 213, and 214, of chapters 1 through 7 of this title are applicable to this chapter.

(Added Pub. L. 87–826, § 2, Oct. 15, 1962, 76 Stat. 952.)

CHAPTER 10—EXCHANGE OF CENSUS INFORMATION

AMENDMENTS

2002—Pub. L. 107–347, title V, § 526(b)(2), Dec. 17, 2002, 116 Stat. 2970, added item 402.

§ 401. Exchange of census information with Bureau of Economic Analysis

(a) EXCHANGE OF INFORMATION.—The Bureau of the Census shall exchange with the Bureau of Economic Analysis of the Department of Commerce information collected under this title, and under the International Investment and Trade in Services Survey Act, that pertains to any business enterprise that is operating in the United States, if the Secretary of Commerce determines such information is appropriate to augment and improve the quality of data collected under the International Investment and Trade in Services Survey Act. Information provided to the Bureau of Economic Analysis by the Bureau of the Census shall be only those data collected directly from respondents by the Bureau of the Census.

(b) REQUESTS FOR INFORMATION.—The Director of the Bureau requesting information under this section shall make the request in writing and shall certify that the information will be used only for statistical activities performed to improve the quality of data collected under the authority of title 13, United States Code, and the International Investment and Trade in Services Survey Act.

(c) DEFINITION.—As used in subsection (a), the terms ''business enterprise'' and ''United States'' have the meanings given those terms in section 3 of the International Investment and Trade in Services Survey Act.

(Added Pub. L. 101–533, § 5(a), Nov. 7, 1990, 104 Stat. 2347.)

REFERENCES IN TEXT

The International Investment and Trade in Services Survey Act, referred to in text, is Pub. L. 94–472, Oct. 11, 1976, 90 Stat. 2059, as amended, which is classified generally to chapter 46 (§ 3101 et seq.) of Title 22, Foreign Relations and Intercourse. Section 3 of the Act is classified to section 3102 of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of Title 22 and Tables.

§ 402. Providing business data to Designated Statistical Agencies

The Bureau of the Census may provide business data to the Bureau of Economic Analysis and the Bureau of Labor Statistics (''Designated Statistical Agencies'') if such information is required for an authorized statistical purpose and the provision is the subject of a written agreement with that Designated Statistical Agency, or their successors, as defined in the Confidential Information Protection and Statistical Efficiency Act of 2002.

(Added Pub. L. 107–347, title V, § 526(b)(1), Dec. 17, 2002, 116 Stat. 2969.)

REFERENCES IN TEXT

The Confidential Information Protection and Statistical Efficiency Act of 2002, referred to in text, is title V of Pub. L. 107–347, Dec. 17, 2002, 116 Stat. 2962, which enacted this section, amended section 176a of Title 15, Commerce and Trade, and enacted provisions set out as a note under section 3501 of Title 44, Public Printing and Documents. Provisions defining ''Designated Statistical Agency'' are contained in section 522 of the Act, which is set out in a note under section 3501 of Title 44.

Exhibit 4

American Community Survey
Key Facts

WHAT?

- **WHAT IT IS.** The American Community Survey is the premier source of statistics about the socioeconomic and housing characteristics of our nation. Together with population data from the once-a-decade census, ACS data help determine how more than $400 billion in federal funds are distributed to state and local areas each year.

- **WHAT IT IS *NOT*.** The American Community Survey is not the official source of population counts. The official population count — including population by age, sex, race and Hispanic origin — comes from the once-a-decade census, supplemented by annual population estimates (the Population Estimates Program). American Community Survey data are designed to show the *characteristics* of the nation's population and should not be used as actual population counts or housing totals for the nation, states or counties.

- **SHORT FORM-ONLY CENSUS.** Prior to the American Community Survey, about one-in-six households and people living in group quarters were randomly selected to fill out a more detailed census long form rather than the standard census short form during the 10-year census. The American Community Survey collects information similar to the former long form. It eliminated the need for a separate long form for the 2010 Census and streamlined the entire census process.

- **QUESTIONS.** Questions on the American Community Survey cover a wide range of social, economic, housing and demographic topics.

- **WHERE THE QUESTIONS COME FROM.** The questions on the American Community Survey are included to produce statistics needed to manage federal programs or comply with federal laws, regulations or court decisions. The data help determine how more than $400 billion of federal tax dollars are allocated annually to local communities. State and local leaders, planners and businesses use the data to help make important decisions.

For information on each question, go to the “background” section of the ACS Media Tool Kit, accessible from the ACS Web page (http://www.census.gov/acs).

- **CONFIDENTIALITY.** Protecting the confidentiality of survey respondents is the Census Bureau’s highest priority. All individual answers are anonymous and confidential. Any Census Bureau employee who

violates their oath of confidentiality is subject to a prison term, a fine, or both.

WHO?

- **RECIPIENTS.** In the United States and Puerto Rico, about 250,000 addresses per month receive the American Community Survey. This is equal to about one-in-480 addresses a month, or one-in-40 a year. During Census 2000, about one-in-six addresses received the long form. Addresses are randomly selected and geographically dispersed.

- **SMALLER AREAS.** A larger proportion of addresses in small governmental units (American Indian reservations, small counties and towns) receive the survey. The monthly sample size is designed to approximate the ratio used in Census 2000, requiring more intensive distribution in these areas.

- **MINIMIZING BURDEN.** The odds of receiving the American Community Survey in any 10-year period are less than 1-in-4. No address will receive the survey more than once in any five-year period.

WHERE?

- **LOCATIONS.** The American Community Survey is taken in all counties, American Indian reservations, Alaska Native villages, and Hawaiian homelands in the United States. The Puerto Rico Community Survey is conducted throughout the Commonwealth of Puerto Rico.

WHEN?

- **START.** Full implementation of the ACS in the U.S. and Puerto Rico began with data collection in January 2005. Group quarters (nursing facilities, military barracks, college dorms, etc.) were added beginning in January 2006.

- **RESULTS.** ACS data are released annually in the form of single- and multi-year estimates. Annual one-year estimates are available for areas with populations of 65,000 or more. Three-year estimates for areas with populations of 20,000 or more were first released in 2008, and five-year estimates are planned for release for all areas beginning in 2010. This schedule is based on the time it will take to collect data from a sample size large enough to produce accurate results for geographic units of different sizes.

WHY?

- **TEN YEARS IS TOO LONG FOR COMMUNITIES TO WAIT FOR CURRENT DATA.** With the American Community Survey, communities will have current information to assess local needs, such as where to build new roads, schools or senior centers. The survey also will help ensure that communities get their fair share of government funding.

- **CURRENT DATA ARE CRITICAL.** Every year, more than $400 billion in federal funds are distributed to localities based on a combination of the

census population and housing numbers and American Community Survey data.

- **DECISION-MAKING TOOL.** The American Community Survey can help communities avoid making costly mistakes — such as building an elementary school, road or seniors' facility in the wrong place.

- **IMPROVING THE 2010 CENSUS.** The American Community Survey has improved census operations by streamlining address updates and allowing the 2010 Census to focus on counting the population.

- **AUTHORITY.** The American Community Survey is part of the decennial census, even though it is conducted throughout the decade. As such, its legal authority derives from the same statutes that authorize the census: Title 13 of the U.S. Code, Sections 141 and 193. As with the basic decennial census, responding to the American Community Survey is mandatory.

HOW?

- **RESPONSES AND FOLLOW-UP.** The Census Bureau mails surveys every month to a random sample of addresses in each county. If a household does not respond within six weeks, Census Bureau staff may attempt to contact the household by telephone to complete the survey. If that, too, fails, Census Bureau representatives visit a sample of the remaining addresses for an in-person interview. There is a separate process for people living in group quarters (college dorms, nursing homes, military barracks, etc.).

- **FOLLOW-UP COSTS.** The cost to taxpayers of a follow-up interview for households that do not mail back their completed questionnaires is up to 10 times greater than the cost of processing questionnaires received by mail.

For more information, visit the American Community Survey Web page at <http://www.census.gov/acs >.

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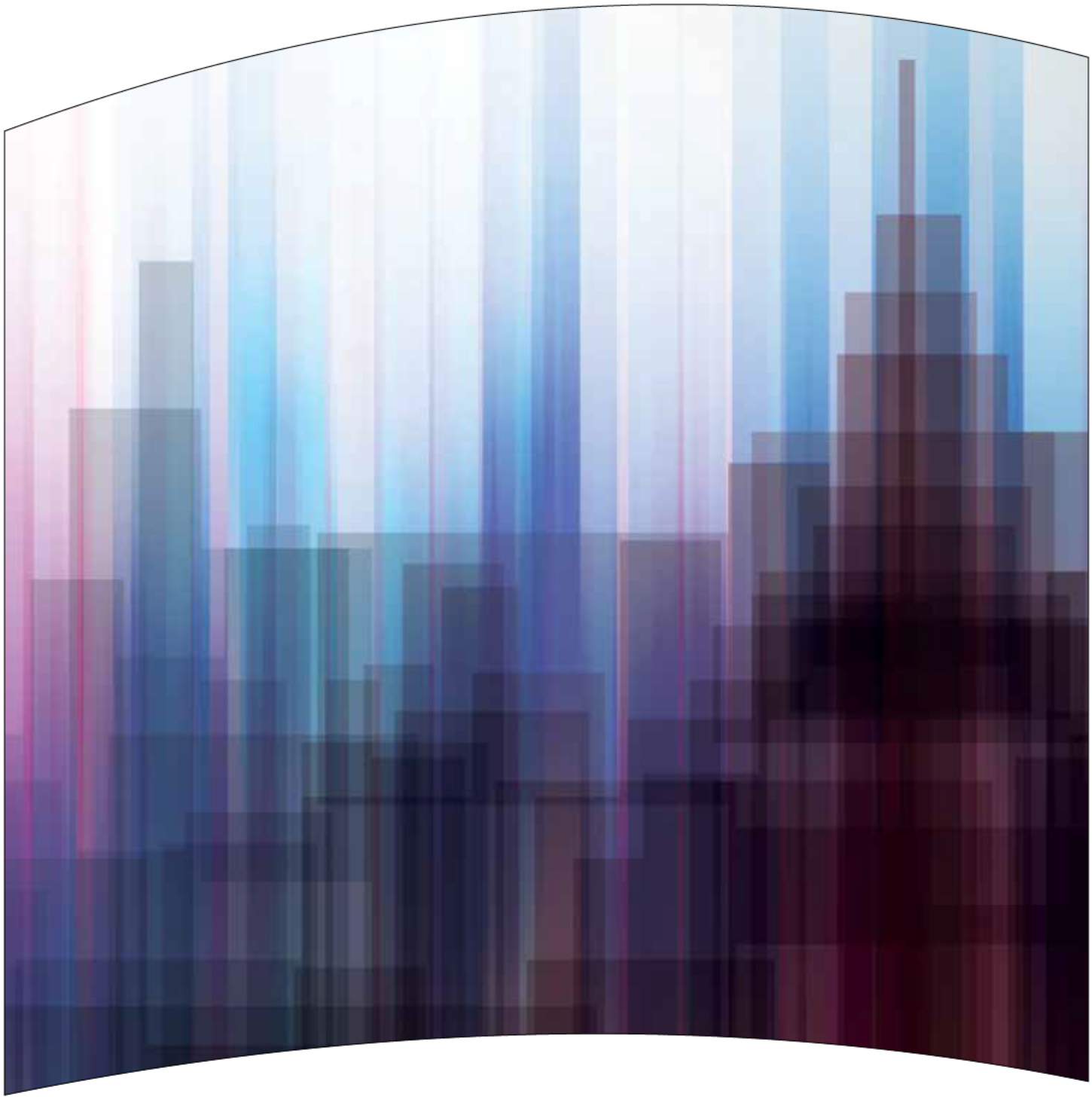
Exhibit 5

Subjects Planned for the 2020 Census and American Community Survey

Federal Legislative and Program Uses

Issued March 2017
Revised



United States Census Bureau

U.S. Department of Commerce
Economics and Statistics Administration
U.S. CENSUS BUREAU
census.gov

Contents

Race/Ethnicity

Race asked since 1790, ethnicity asked since 1970.

QUESTIONS ABOUT A PERSON'S RACE OR ETHNICITY ARE USED TO CREATE DATA ABOUT RACE AND ETHNIC GROUPS.

These data are required for federal and state programs and are critical factors in the basic research behind numerous policies, particularly for civil rights. Race and ethnicity data are used in planning and funding government programs that provide funds or services for specific groups. These data are also used to evaluate government programs and policies to ensure they fairly and equitably serve the needs of all racial and ethnic groups and to monitor compliance with antidiscrimination laws, regulations, and policies. States also use these data to meet legislative redistricting requirements.

The U.S. Census Bureau collects race and ethnicity data in accordance with the 1997 Office of Management and Budget standards on race and ethnicity. The categories on race and ethnicity are based on self-identification and generally reflect a social definition of race and ethnicity. The categories are not an attempt to define race and ethnicity biologically, anthropologically, or genetically.

RACE AND ETHNICITY DATA HELP COMMUNITIES:

Ensure Equal Opportunity

Knowing the races and ethnicities of community members in combination with information about housing, voting, language, employment, and education, helps government and communities enforce antidiscrimination laws, regulations, and policies. For example, race and ethnicity data are used in the following ways:

- Establish and evaluate the guidelines for federal affirmative action plans under the Federal Equal Opportunity Recruitment Program.
- Monitor compliance with the Voting Rights Act and enforce bilingual requirements.
- Monitor and enforce equal employment opportunities under the Civil Rights Act of 1964.
- Identify segments of the population who may not be getting needed medical services under the Public Health Service Act.
- Allocate funds to school districts for bilingual services under the Bilingual Education Act.

Understand Changes

Knowing if people of different races and ethnicities have the same opportunities in education, employment, voting, home ownership, and many other areas is of interest to researchers, advocacy groups, and policymakers. The National Science Foundation uses data on race and ethnicity to provide information on people of different racial and ethnic backgrounds in the science and engineering workforce. Several federal agencies use race and ethnicity data to investigate whether housing or transportation improvements have unintended consequences for specific race and ethnic groups. Data on race and ethnicity are used with age and language data to address language and cultural diversity needs in health care plans for the older population.

Administer Programs for Specific Groups

Knowing how many people are eligible to participate in certain programs helps communities, including tribal governments, ensure that programs are operating as intended. For example, the Indian Housing Block Grant program, Indian Community Development Block Grant program, and Indian Health Service all depend on accurate estimates of American Indians and Alaska Natives. Data for the American Indian and Alaska Native population come from the questions about a person's race or ethnicity.