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# CENSUS 2000 ISSUES AND USE OF CENSUS DATA BY STATE AND LOCAL GOVERNMENTS

LEONARD M. GAINES\*

## I. INTRODUCTION

Historically, state and local governments are heavy users of decennial census data.<sup>1</sup> There is no reason to believe that the results of Census 2000 will be used any less than those of earlier censuses. However, the issue of statistically adjusting Census 2000 results to account for households that did not respond to the data collection efforts, and the Census Bureau's proposed response to apparent errors in the geographic placement of various living units raise some interesting questions about the use of these data. This article explores several of these issues. It begins by describing the constitutional uses of census data, as applied to redistricting. This article then provides an introductory overview of how state and local governments use census data to meet statutory requirements and for programmatic purposes. Following this overview is a section which briefly reviews the decision of adjusting Census 2000 and describes the geographic placement problem, including the Census Bureau's proposed response. This final section identifies several unresolved legal issues related to the issues of adjustment and geographic placement.

The release of new census data is an important event for state and local governments throughout the United States.<sup>2</sup> This is because these governments are heavy users of the data, and a new release will replace data that are ten to thirteen years old.<sup>3</sup>

A mid-1990s study of the use of census data by organizations involved in the Census Bureau's State Data Center and Business and Industry Data

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1. See generally MICHAEL R. LAVIN, UNDERSTANDING THE CENSUS: A GUIDE FOR MARKETERS, PLANNERS, GRANT WRITERS AND OTHER DATA USERS (1996).

2. See, e.g., Charity Vogel, *Elfvin to Draw Districts for County Legislature*, THE BUFFALO NEWS, July 21, 2001, available at <http://www.buffalo.com> (describing the flurry of activity that was touched off by rival groups when Judge John T. Elfvin announced he would draw new boundaries for legislative districts as a result of the 2000 census).

3. See, e.g., LAVIN, *supra* note 1, at 34-38 (showing state government and local government uses of census data).

Center programs indicated that state and local government organizations are major users of census data.<sup>4</sup> In this study, 23 state government, 80 local government, and 31 university-based organizations used census data about 22,000 times during the single year studied.<sup>5</sup> In looking at these numbers, it is important to remember that these represent a very small portion of state and local governments in the United States.

These governments use the data for a variety of purposes that are mandated by their constitutions, statutes, federal statutes, and court decisions.<sup>6</sup> They also use the data for a variety of non-mandated program planning and evaluation, and for other administrative purposes.<sup>7</sup>

This paper briefly describes each of these uses listed above. It also speculates about the potential impact of several situations that have occurred during the 2000 census.

## II. CONSTITUTIONAL USES OF CENSUS DATA

### A. CONGRESSIONAL REDISTRICTING

The United States Constitution requires that a census be taken within three years of the first meeting of Congress and every ten years thereafter.<sup>8</sup> In fact, the first census was taken in 1790.<sup>9</sup> Originally, the purpose of the census was to apportion the House of Representatives and direct taxes between the states.<sup>10</sup> The use of the census to apportion taxes was eliminated by the second section of the Fourteenth Amendment to the Constitution in 1870, but the use of the census for congressional reapportionment was retained.<sup>11</sup>

The 1965 Voting Rights Act, numerous court decisions, and state constitutions have expanded the use of the census to the redrawing of congressional districts within a state.<sup>12</sup> To assist the states in complying with these requirements, Congress has required the Secretary of Commerce to report

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4. Leonard M. Gaines, *The Selection of Census Data in State Data Center/Business and Industry Data Center Program Organizations: A Gatekeeping-Based Model* 47, 70 (1997) (Ph.D. dissertation, Rensselaer Polytechnic Institute) (on file with the Rensselaer Polytechnic Institute Library).

5. *Id.* This study collected data every third week; the number of requests reported here is adjusted for this sampling scheme. *Id.* at 43-45.

6. LAVIN, *supra* note 1, at 33-36.

7. *Id.* at 27-38.

8. U.S. CONST. art. I, § 2, cl. 3.

9. Robert V. Wells, *1790 Census*, in *ENCYCLOPEDIA OF THE U.S. CENSUS* 115 (Margo J. Anderson ed., 2000).

10. U.S. CONST. art. I, § 2, cl. 3.

11. U.S. CONST. amend. XIV.

12. David McMillen, *Apportionment and Districting*, in *ENCYCLOPEDIA OF THE U.S. CENSUS* 40-42 (Margo J. Anderson ed., 2000).

the basic population tabulations that are needed to redraw the congressional districts to the governor and other officers involved with redistricting in each state within one year after the decennial census date.<sup>13</sup> In practice, the Census Bureau reports the population on a census-block by census-block<sup>14</sup> basis to all states by April 1 of the year following the census.<sup>15</sup> This data is commonly referred to as the PL 94-171 data, after the public law amending title 13 of the U.S. Code requiring the Census Bureau to provide this data.<sup>16</sup>

The data provided in this data set include the total population, population by race, population by Latino or Hispanic origin, the population eighteen years of age and older, the eighteen and older population by race, and the eighteen and older population by Latino or Hispanic origin.<sup>17</sup> These data are reported for every census block and for many larger geographic units within a state.<sup>18</sup>

State officials, or their designees, use these data to redraw the congressional districts within the state.<sup>19</sup> Due to past court decisions, the goal is to have the maximum difference between the largest and smallest congressional district within a state to be one person.<sup>20</sup> There are also attempts to make these congressional districts represent communities of interest,<sup>21</sup> be contiguous and compact, and meet a variety of fairness criteria.<sup>22</sup>

However, a report by the National Conference of State Legislatures indicates that the drawing of congressional districts is an issue that is likely to result in lawsuits.<sup>23</sup> In fact, this report shows that after the 1990 Census, lawsuits related to congressional redistricting occurred in forty-one states.<sup>24</sup>

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13. 13 U.S.C. § 141(c) (1994 & Supp. V 1999).

14. A census block is generally defined as the smallest area of land surrounded by streets, other permanent easily identifiable physical features, or selected governmental boundaries. See Margo J. Anderson, *Tabulation Geography*, in *ENCYCLOPEDIA OF THE U.S. CENSUS* 348-49 (Margo J. Anderson ed., 2000).

15. 13 U.S.C. § 141(a) & (b) (1994 & Supp. V 1999).

16. Population, Tabulation for State Legislative Apportionment, Plan, Pub. L. No. 94-171, 89 Stat. 1023 (1975) (codified at 13 U.S.C. § 141 (2000)).

17. CENSUS 2000 REDISTRICTING DATA (PUBLIC LAW 94-171) SUMMARY FILE, U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, at 6-1 to 6-8 (ch. 6, Summary Table Outlines 2001).

18. *Id.* at 1-1 (ch. 1, Abstract).

19. LAVIN, *supra* note 1, at 28.

20. Roman Hedges, Ph.D., address at the Monthly Meeting of the Albany Chapter of the American Statistical Association (Feb. 2001) (transcript on file with author). Dr. Hedges is a member of New York State's Legislative Task Force on Reapportionment and Demographic Research. This is the group responsible for developing the legislative boundaries for the approval of the New York State Legislature.

21. A community of interest is an identifiable group of people that could generally be expected to have common concerns and is of sufficient size and concentration to potentially influence the outcome of an election. Hedges, *supra* note 20. For example, persons of Mexican descent in southern California might be considered a community of interest.

22. Hedges, *supra* note 20.

23. REDISTRICTING CASE SUMMARIES FROM THE '90S, NATIONAL CONFERENCE OF STATE LEGISLATURES, Table of Contents, at iii & iv (1998).

24. *Id.*

## B. STATE AND LOCAL LEGISLATIVE REDISTRICTING

In addition to being used to redraw congressional districts, the census is required for redrawing state and local legislative districts.<sup>25</sup> For example, the New York State Constitution requires that the decennial census be used to draw the state's senate and assembly districts.<sup>26</sup> In this particular situation, the building blocks are the towns<sup>27</sup> and blocks within cities.<sup>28</sup> If a town is large enough to be divided into more than one state legislative district, its blocks become the building blocks for the legislative districts.<sup>29</sup> According to New York's constitution, the senate and assembly districts must be drawn to be as equal in population as possible.<sup>30</sup> Thus, if a town or a block in a city is located on the boundary of two districts and moving it from one district to the other equalizes the population, then the town or block must be moved.<sup>31</sup>

Increasingly, courts are requiring counties, towns, and cities to adopt a district-based legislative form of government.<sup>32</sup> This is especially true when they find that other forms of local legislative governance lead to discrimination against protected minority groups.<sup>33</sup> For example, in New York State in 1989, the U.S. Supreme Court ordered New York City to replace its legislative body, which had been based on a weighted-voting system<sup>34</sup> with a district-based legislature.<sup>35</sup> In other areas of the state, such as Erie County, the courts have already gotten involved in the redistricting of the local legislative body.<sup>36</sup>

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25. See generally Deborah A. Gona, *State and Local Governments: Legislatures*, in *ENCYCLOPEDIA OF THE U.S. CENSUS* 335 (Margo J. Anderson ed., 2000).

26. N.Y. CONST. art. III, §§ 4, 5, 5-a.

27. In New York State, the entire land area of counties is divided into towns, cities, and American Indian Reservations. Villages are centers of population that are overlays on towns.

28. N.Y. CONST. art. III, § 5.

29. *Id.*

30. N.Y. CONST. art. III, §§ 4, 5, 5-a.

31. *Id.* § 5.

32. Gona, *supra* note 25, at 335.

33. *Id.* at 336.

34. *New York City Bd. of Estimate v. Morris*, 489 U.S. 688, 697-98 (1989). A weighted-voting system is a system in which there is a set number of people with the right to vote and each person's vote is multiplied by a factor determined by a formula. *Id.* To pass, a motion must receive a majority of the weighted votes that are cast. *Id.* at 697. For example, each person on a board might represent a town, and he or she gets 1 vote for every 1,000 people in the town. So, if there are 10,000 people in a representative's town, his or her vote is counted 10 times; the vote of a representative in a town with 25,000 people is counted 25 times.

35. *Id.* at 703.

36. See, e.g., Vogel, *supra* note 2.

### III. STATUTORY USES OF CENSUS DATA

In addition to the constitutional uses described above, state and local governments use census data to meet a variety of statutory requirements.<sup>37</sup> These uses include such things as determining funding allocations, determining program eligibility, distributing tax revenues, and assessing regulatory compliance.<sup>38</sup>

#### A. FUNDING ALLOCATION DETERMINATION

State governments distribute millions of dollars each year to local governments.<sup>39</sup> In many cases, the formulae used to distribute these funds include population as part of the calculations.<sup>40</sup> However, it is important to note that population is only part of these formulae.<sup>41</sup> Often the population component in these formulae involves minimum and/or maximum funds per person rather than a straight per capita amount.<sup>42</sup>

#### B. PROGRAM ELIGIBILITY DETERMINATION

Many governmental programs are designed to assist communities instead of individuals.<sup>43</sup> Often a community's eligibility for these programs is determined, at least partially, on the basis of census data.<sup>44</sup>

One example of this eligibility determination is the Empire Zones program in New York State.<sup>45</sup> In this program, a proposed Empire Zone must contain a census tract with a minimum population of 2,000 people, a poverty rate of at least 20%, and an unemployment rate at least 1.25 times the statewide unemployment rate.<sup>46</sup> The only source for these data at the census tract level is the decennial census.<sup>47</sup>

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37. Leonard M. Gaines et al., *State and Local Governments: Use of Census Data*, in *ENCYCLOPEDIA OF THE U.S. CENSUS* 337-39 (Margo J. Anderson ed., 2000).

38. LAVIN, *supra* note 1, at 27-38.

39. Constance F. Citro, *Federal Agency Uses of Census Data*, in *ENCYCLOPEDIA OF THE U.S. CENSUS* 216-17 (Margo J. Anderson ed., 2000).

40. *Id.* at 216.

41. *Id.*

42. BARBARA EVERITT BRYANT & WILLIAM DUNN, *MOVING POWER AND MONEY: THE POLITICS OF CENSUS TAKING* 62-63 (1995).

43. LAVIN, *supra* note 1, at 35.

44. *Id.*

45. N.Y. GEN. MUN. LAW § 958 (McKinney 1999 & Supp. 2001). These Empire Zones are specifically designated areas which offer incentives in order to encourage economic and business development and job creation. See Empire State Development, Services for Businesses, Empire Zones at [http://www.empire.state.ny.us/serv\\_location\\_edz-ez.html](http://www.empire.state.ny.us/serv_location_edz-ez.html) (last visited Mar. 18, 2002).

46. *Id.* § 958(a)(i).

47. *Id.*

### C. TAX REVENUE DISTRIBUTION

In New York State, there are no *ad valorem* taxes on personal property.<sup>48</sup> As a result, local governments have two major sources of tax revenues available to them.<sup>49</sup> These tax sources are *ad valorem* taxes on real property and sales taxes.<sup>50</sup> The town, city, and/or village where the property is located usually administers real property taxes.<sup>51</sup>

The county where the sale takes place, on the other hand, generally administers sales taxes.<sup>52</sup> In most New York State counties, the county's portion of the sales tax is shared between the county and the towns, cities, and villages within the county.<sup>53</sup> While the methods of distributing the sales tax between the county and its localities vary greatly from county to county, a number of counties distribute their sales tax revenues on the basis of each locality's population.<sup>54</sup>

### D. REGULATORY COMPLIANCE

State and local governments are subject to a variety of regulations.<sup>55</sup> One example of these regulations is the need to hire employees without regard to race, ethnicity, or sex.<sup>56</sup> To assist organizations in checking whether they are recruiting and hiring employees without bias, the Census Bureau produced a set of tables from the 1990 census showing the potential number of employees in each geographic area by occupation, gender, race, and ethnicity.<sup>57</sup> Employers, including state and local governments, use this file to see if the racial, ethnic, and gender mix of their applicants is statistically the same mix as that of the potential applicants for each position or for other equal employment opportunity compliance purposes.<sup>58</sup>

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48. N.Y. CONST. art. XVI, § 3.

49. N.Y. TAX LAW §§ 1201-1203 (McKinney 2000).

50. *Id.*

51. *Id.* §§ 1201 & 1203.

52. *Id.* § 1202.

53. *Id.* § 1262.

54. *See, e.g., id.* § 1262(d).

55. *See, e.g.,* N.Y. GEN. MUN. LAW § 958 (McKinney 1999 & Supp. 2001) (laying out the requirements for a New York State Empire Zone).

56. *See* LAVIN, *supra* note 1, at 36 (showing reporting requirements for businesses employing 100 or more workers and for federal contractors who receive more than \$50,000 in revenue from the U.S. government).

57. EQUAL OPPORTUNITY FILE, 1990 CENSUS OF POPULATION AND HOUSING, U.S. CENSUS BUREAU (Data User Services Div. CD-ROM, issued Jan. 1993) [hereinafter EQUAL OPPORTUNITY FILE].

58. *See id.* at I-1 (1992) (showing detailed occupation and other characteristics).

#### IV. PROGRAMMATIC USES OF CENSUS DATA

In addition to the constitutional and statutory needs for census data, state and local governments use the data for a wide variety of programmatic uses.<sup>59</sup> Examples of these uses include community planning, disaster planning, program planning, and business attraction marketing.<sup>60</sup>

##### A. COMMUNITY PLANNING

A major function of government, especially local government, is to plan its community's growth.<sup>61</sup> In order to plan properly, it is important to understand the current state of the community.<sup>62</sup> The decennial census is the only source for standardized information about very small areas around the United States.<sup>63</sup> Additionally, the census provides data on a wide variety of topics.<sup>64</sup> These two characteristics make the decennial census one of the very few sources of data for understanding the community.<sup>65</sup> Often the census data are combined with local data, such as building permits.<sup>66</sup>

One example of using census data for community planning is developing bus routes and schedules.<sup>67</sup> For example, a special product from the decennial census shows the number of people living in one census tract or traffic analysis zone, as well as census tracts or traffic analysis zone in which they work.<sup>68</sup> By combining this information with information available from the decennial census regarding the time people leave for work and how they get to work, it is possible to assess the need for additional or new bus service within the community.<sup>69</sup> It is also possible to determine when that bus service is needed.<sup>70</sup> Looking at changes in the number of building permits might not help in this type of planning if the

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59. Gaines et al., *supra* note 37, at 337.

60. *Id.* at 337-39.

61. *Id.* at 337.

62. *Id.* at 338.

63. *Id.* at 337.

64. *Id.* at 338.

65. *Id.*

66. It should be noted that the Census Bureau is currently developing the American Community Survey. See generally ECONOMICS AND STATISTICS ADMIN., U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, PUB. NO. MSO/00-GACS, AMERICAN COMMUNITY SURVEY QUESTIONS AND ANSWERS (2000) [hereinafter AMERICAN COMMUNITY SURVEY]. If this survey reaches the production stage, targeted to occur in 2003, it will provide data equivalent to the decennial census on an annual basis, down to individual census tracts. *Id.*

67. *Id.*

68. 1990 CENSUS TRANSP. PLANNING PACKAGE, BUREAU OF TRANSP. STATISTICS, U.S. DEP'T OF TRANSP., at 2 (CD-ROM) (showing technical documentation).

69. AMERICAN COMMUNITY SURVEY, *supra* note 66. Other local information such as road capacity and changes in employment for specific areas is also considered. *Id.*

70. *Id.*



housing stock in the community is stable.<sup>71</sup> Only the census will show changes in the community over time.<sup>72</sup>

## B. DISASTER PLANNING

When planning responses to disasters such as major fires, floods, and earthquakes, it is important to know information such as where special groups of people like the elderly or disabled are located and the number of cars available to move people.<sup>73</sup> By providing information on group quarters, such as nursing homes, disability status, and the number of vehicles available to households by small geographic areas, the decennial census becomes an important source of information to disaster planners.<sup>74</sup>

A specific example of the use of census data for disaster response planning occurred shortly after the September 11, 2001, destruction of the World Trade Center in New York City. On this occasion, the author of this article supplied the New York State Office of Mental Health with 1990 census data on the number of workers from specific other counties who commuted into Manhattan (New York County). Based on telephone conversations with the analyst at the Office of Mental Health, it was determined that this information was being used to help allocate disaster-related mental health funds to the counties where the workers most directly affected by this event resided.

## C. PROGRAM PLANNING

In designing programs to meet a community's needs, it is helpful to understand the population such programs are intended to serve.<sup>75</sup> Modeling the population based on census data often provides insight into the population.<sup>76</sup>

For example, assume a potential program is designed to provide a benefit to individuals who are working, but live in families with incomes below 200% of poverty. In estimating the cost of a program like this, the analysts looking at it might very well be interested in knowing how many

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71. *Id.*

72. *Id.*

73. LAVIN, *supra* note 1, at 37.

74. *Id.*

75. *See id.* (showing the need for school districts to study changed population patterns). "The figures are used to redraw school district boundaries, assess the need for expanded facilities, anticipate demand for special education programs, and implement new services. Planning for new school buildings must begin years in advance of the actual need, so school officials must keep abreast of changing population patterns." *Id.*

76. *Id.* at 37-38. "[C]haracteristics, such as age, race, household composition, housing value, and rental payments, are important indicators of economic and social conditions within Census Blocks." *Id.* at 38.

people would be eligible to take part in the program. By using census data, it would be easy to estimate the number of residents who would be eligible to partake in the program.<sup>77</sup>

#### D. BUSINESS ATTRACTION MARKETING

Another function that state and local governments perform is attempting to improve the region's economy.<sup>78</sup> One way this is done is by trying to attract new businesses into the area.<sup>79</sup>

When a business is considering possible locations for expansion, it tends to be interested in many factors.<sup>80</sup> Some of the factors that frequently interest a company include such questions regarding the availability of potential workers in certain occupations or educational levels.<sup>81</sup> The answers to these questions come from the census.<sup>82</sup> A major advantage of data from the census is that they are consistent across the nation, allowing for comparisons of different geographic areas.<sup>83</sup>

#### V. CENSUS 2000 ISSUES

There are several issues related to Census 2000 that may have major effects on its use by state and local governments.<sup>84</sup> Two of these issues that may have the largest impact are the adjustment of the census to account for people who were missed in the population count during the spring of 2000 and errors in the placement of group quarters.<sup>85</sup>

##### A. ADJUSTMENT OF CENSUS 2000

One of the major debates involved with the 2000 census revolved around the Census Bureau's plans to reduce the cost of the census by sampling the last few percent of the population not responding to the regular efforts to count everyone in the nation.<sup>86</sup> In the end, the U.S. Supreme

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77. *Id.*

78. Gaines et al., *supra* note 37, at 337.

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. Deirdre A. Gaquin, *Data Dissemination and Use*, in *ENCYCLOPEDIA OF THE U.S. CENSUS* 108 (Margo J. Anderson ed., 2000).

84. *See, e.g.*, U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, REPORT OF THE EXECUTIVE STEERING COMM. FOR ACCURACY AND COVERAGE EVALUATION POLICY (2001) (examining whether the adjusted Census 2000 data are more accurate) [hereinafter ESCAP report].

85. *See id.* at 12 (addressing the problem of duplication of addresses in the Census Bureau's address list).

86. *See U.S. Dep't of Commerce v. U.S. House of Representatives*, 525 U.S. 316, 342 (1999) (debating whether statistical sampling of the last 10% of the population of each census tract would be a supplement to the count or an adjustment of the count).

Court ruled that the count reported by the Census Bureau to apportion the House of Representatives between the states had to be the number of people counted before any adjustment.<sup>87</sup>

However, this decision did not answer the question about which numbers, adjusted or unadjusted, should be used to redraw the districts within each state.<sup>88</sup> The question about adjustment moved forward when the White House and Congress reached a compromise that left the decision regarding whether or not to adjust the census to the Department of Commerce.<sup>89</sup> This compromise required the Census Bureau to report the unadjusted numbers for redistricting in addition to the adjusted numbers if the decision was made to adjust the census.<sup>90</sup> The implementation of this compromise was through a Federal Register notice that left the decision to the Director of the Census Bureau.<sup>91</sup> Finally, in February 2001, the new Secretary of Commerce moved the decision on adjustment back to himself.<sup>92</sup>

Given the uncertainty over which numbers would be recommended for use in redistricting and the general and political questions about the statistical quality of the adjusted numbers, a number of states, such as Virginia, passed laws requiring that the unadjusted numbers be used for redistricting purposes.<sup>93</sup> A number of other states, such as New York, made no advance decision about which numbers they would use.<sup>94</sup>

Ultimately, all of this wrangling proved to be moot.<sup>95</sup> In early March 2001, the Census Bureau's executive committee responsible for reviewing the information available on the Accuracy and Coverage Evaluation Survey and the basic Census 2000 data recommended against adjusting the data for redistricting purposes.<sup>96</sup> The stated reason for this decision was that there were a number of questions about the statistical quality of the data that it

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87. *Id.*

88. *See, e.g., id.* at 350 (Breyer, J., concurring in part and dissenting in part) (struggling with the idea of sampling being used as a substitute versus sampling used as a supplement).

89. Dep'ts of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1998, Pub. L. 105-119, sec. 209(j), 111 Stat. 2440, 2483 (codified at 13 U.S.C. § 141 (2000)).

90. *Id.*

91. Report of Tabulations of Population to States and Localities Pursuant to 13 U.S.C. § 141(c) and Availability of Other Population Information, 65 Fed. Reg. 59,713 (Oct. 6, 2000).

92. Report of Tabulations of Population to States and Localities Pursuant to 13 U.S.C. 141(c) and Availability of Other Population Information; Revocation of Delegation of Authority, 66 Fed. Reg. 11,231 (Feb. 23, 2001) (to be codified at 15 C.F.R. pt. 101).

93. VA. CODE ANN. § 24.2-301.1 (Michie 2000).

94. *See* cover letter accompanying EMPIRE STATE DEVELOPMENT, CENSUS 2000, PUBLIC LAW 94-171 PL-T1: POPULATION CHANGE FOR NEW YORK LOCAL GOVERNMENT AREAS: 1990 TO 2000 (Mar. 2001) (waiting until March 2001 to state that census data are not adjusted).

95. *See* ESCAP report, *supra* note 84, at i.

96. *Id.*

could not resolve in time to release the redistricting data by the statutory deadlines.<sup>97</sup> One of the major discrepancies that it could not resolve was a large difference between the number of people counted in the census and the lower population that was estimated from administrative records.<sup>98</sup> The Census Bureau has stated that further research is being conducted into the possibility of adjusting Census 2000 data for future uses, such as the products based on the long-form sample and intercensal population estimates, and that a recommendation about these uses will be made.<sup>99</sup>

Given the Census Bureau's time frame for producing redistricting products, adjusted numbers had to be produced before the decision was made, since it would have been technically impossible to produce adjusted numbers in the two-week period between the release of the ESCAP report and the release of the first redistricting product.<sup>100</sup> Additionally, adjusted numbers had to be produced, at least to some relatively detailed geography, in order to analyze their quality so that the adjustment decision could be made.<sup>101</sup>

The compromise law required the Census Bureau to provide unadjusted numbers if the decision to adjust the 2000 census for undercount was made.<sup>102</sup> The Federal Register Notice of October 6, 2000, required the release of the adjusted numbers if the Census Bureau's executive committee recommended for adjustment and the Director of the Census Bureau (or the Secretary of Commerce) decided against adjustment.<sup>103</sup> However, there was no provision for the release of the adjusted numbers if, as actually happened, the executive committee recommended against adjustment.<sup>104</sup>

As mentioned above, the Census Bureau's executive committee is still considering the issue of adjusting the Census 2000 data for purposes other than redistricting.<sup>105</sup> The data still potentially subject to adjustment would

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97. *Id.* at i-iii.

98. *Id.* at ii.

99. The Census 2000 Count Question Resolution Program, 66 Fed. Reg. 35,588, 35,590 (July 6, 2001); see also Memorandum from John H. Thompson, Chair, Executive Steering Comm. For A.C.E. Policy, to William G. Barron, Jr., Acting Director, U.S. Census Bureau (Aug. 7, 2001).

100. ESCAP report, *supra* note 84, at i-iii.

101. *Id.*

102. Pub. L. 105-119, sec. 209(j), 111 Stat. 2440, 2483 (1997) (codified at 13 U.S.C. § 141 (2000)).

103. 65 Fed. Reg. 59,713 (Oct. 6, 2000).

104. *Id.* In this situation, it is likely that someone will want to research the possible impacts of adjusting the 2000 census, had that been the result of the decision. But, there is no clear requirement that the data needed to conduct this research (the adjusted counts) be released. Because there is no clear requirement for the release of the adjusted counts, it is likely that a researcher will need to file a freedom of information request in order to obtain these data.

105. Thompson, *supra* note 99.

be the data collected on the "long forms" and the data that form the basis for the population projections.<sup>106</sup>

If the data from the Census 2000 long form are adjusted for undercount, the Census Bureau will be reporting different population figures for the same area on the complete count products and long form products from the same census for all geographic areas.<sup>107</sup> In past censuses, products based on the long form had different populations than the complete count-based products for geographic areas smaller than some threshold—usually counties or places; however, for areas above this threshold, the two population figures agreed.<sup>108</sup> This population agreement happened in earlier censuses because the Census Bureau forced the populations of these areas to be the same when it weighted the sample responses from the long-form questionnaires.<sup>109</sup> Since any difference in the population counts between the two types of reports was due solely to the sampling done as part of the long-form products, the population reported on the complete count products was generally considered to be the more accurate figure.<sup>110</sup>

If the Census Bureau decides to adjust the 2000 census long-form products, it will be stating, either explicitly or implicitly, that the adjusted data is more accurate than the unadjusted. This is likely to leave data users confused about which population figure to use for any given purpose. If the population figure used affects a community's funding, there are likely to be lawsuits arguing that the incorrect population count was applied.

## B. GROUP QUARTERS ISSUES

In the census, there are two basic living arrangements that are counted.<sup>111</sup> These are housing units and group quarters.<sup>112</sup> Housing units are individual houses or apartments with a single individual, a single family, or shared by a small number of people who are not related to each other.<sup>113</sup> Group quarters are all of the other types of living arrangements.<sup>114</sup>

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106. *Id.*

107. Those census products based on the questionnaires collected from every housing unit and person living in group quarters in the nation are commonly referred to as complete-count or short-form products. See Constance F. Citro, *Content*, in *ENCYCLOPEDIA OF THE U.S. CENSUS 91* (Margo J. Anderson ed., 2000). The data collected on these questionnaires include the basic demographic data needed for redistricting. *Id.* The long-form questionnaires are collected from a sample of the population and include topics such as income, education, employment status, and housing characteristics. *Id.* at 91-92.

108. LAVIN, *supra* note 1, at 348.

109. *Id.*

110. *Id.*

111. U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, 2000 CENSUS OF POPULATION AND HOUSING, SUMMARY FILE 1, TECHNICAL DOCUMENTATION at B-17 (2001).

112. *Id.*

113. *Id.*

114. *Id.* at B-3.

Some common examples of group quarters are college dormitories, military barracks, shelters for the homeless, and prisons.<sup>115</sup>

### 1. *Group Quarters Errors*

A simple informal analysis of the redistricting data from the 2000 census by participants in the New York State Data Center program showed problems that were so glaring that they immediately attracted attention. One such problem was the town of Milan in Dutchess County, New York.<sup>116</sup> According to the Census Bureau, this town grew by 2,664 people, or 140.6%, from 1,895 people in 1990 to 4,559 people in 2000.<sup>117</sup> The county planning office immediately questioned this number, saying that there has been minimal, if any, growth in that town during the decade.<sup>118</sup> Looking into this in more detail indicated that the Census Bureau apparently had placed a state prison's population from a town about twenty-five miles away into Milan.<sup>119</sup>

Anecdotal reports from local planning agencies around New York State indicated that this type of misplacement of group quarters facilities was not an isolated case.<sup>120</sup> Problems ranged from placing a state prison in a neighboring block to placing college dormitories in a neighboring municipality to more examples as severe as the Dutchess County situation.<sup>121</sup> Conversations with New York State Data Center program contacts in other states indicated that New York was far from alone in experiencing this problem.<sup>122</sup>

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115. *Id.* at B-3 to B-4.

116. Telephone Interview with Lindsay Carille, Dutchess County, N.Y. Department of Planning (March 16, 2001). On March 15, 2001, the U.S. Census Bureau released the data that Ms. Carille examined to find this problem. See EMPIRE STATE DEVELOPMENT, CENSUS 2000, PUBLIC LAW 94-171 PL-T1: POPULATION CHANGE FOR NEW YORK LOCAL GOVERNMENT AREAS: 1990 TO 2000, at 9 (2001) [hereinafter POPULATION CHANGE FOR NEW YORK].

117. POPULATION CHANGE FOR NEW YORK, *supra* note 116, at 9.

118. Carille telephone interview, *supra* note 116.

119. Warren A. Brown, Ph.D., Cornell Institute for Social and Economic Research, presentation to the New York State Data Center Program (May 17, 2001) (transcript on file with author); see also Elizabeth Lynch, *Counties Attempting to Fix Census Errors*, POUGHKEEPSIE JOURNAL, July 15, 2001, available at <http://www.poughkeepsiejournal.com/projects/census>; Cynthia Werthamer, *Census Moves Area Prisons*, DAILY FREEMAN, July 23, 2001, available at <http://www.zwire.com/site/news.asp?bid=1769>.

120. Brown, *supra* note 119; see also John F. Bonfatti, *An Accurate Count? Misallocations Seen in Rural Areas of State*, THE BUFFALO NEWS, May 22, 2001, available at <http://www.buffalo.com>; John Kohlstrand, *Misplaced Prisons Drag Down Census*, ROCHESTER DEMOCRAT AND CHRONICLE, May 22, 2001, available at <http://www.DemocratandChronicle.com>.

121. Brown, *supra* note 119.

122. This is based on a series of informal conversations between Robert L. Scardamalia, Director of the New York State Data Center Program at Empire State Development, and the author [hereinafter, Scardamalia conversations]. It is also supported by a number of e-mail reports on the National Data Center Program's listserve during the spring of 2001.

## 2. *Census Bureau Plans to Fix the Group Quarters Problem*

As in past censuses, the Census Bureau has recognized that some living units get misplaced during the census.<sup>123</sup> In acknowledgement of this weakness and in order to minimize the impact of these errors, the Census Bureau has developed and started to implement the Count Question Resolution (CQR) program.<sup>124</sup>

CQR is designed to allow local governments to alert the Census Bureau about three different problems.<sup>125</sup> Specifically, these problems are to (1) correct municipal boundaries in effect on January 1, 2000, that the Census Bureau identified incorrectly, (2) place erroneously-located living quarters and their associated populations with the correct boundaries or census blocks, and (3) add or remove specific living quarters and their populations that were included or excluded due to processing errors.<sup>126</sup> CQR is not a program that will count living quarters that were not included in the Census Bureau's address lists for the 2000 census.<sup>127</sup>

As the Census Bureau confirms that errors of the types listed above were made, it will notify the affected municipalities of the corrected populations for their areas.<sup>128</sup> The revisions will show just the revised population for the municipality and not any specific areas within it.<sup>129</sup> This new population can be used in funding allocation formulae and other federal programs requiring Census 2000 data.<sup>130</sup> However, the Census Bureau will not change the apportionment or redistricting counts used to draw legislative district boundaries.<sup>131</sup> The Census Bureau also will not reissue the data reported in other Census 2000 products, meaning, for example, that data on income and age distributions will be based on the unrevised population counts.<sup>132</sup>

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123. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, 1990 CENSUS OF POPULATION AND HOUSING EVALUATION AND RESEARCH REPORTS, PROGRAMS TO IMPROVE COVERAGE IN THE 1990 CENSUS 71 (1993).

124. Carol M. Van Horn, DECENNIAL MANAGEMENT DIVISION, CENSUS 2000 INFORMATIONAL MEMORANDUM NO. 100, at 1 (April 26, 2001). Similar programs, under different names, have been used in earlier censuses.

125. The Census 2000 Count Question Resolution Program, 66 Fed. Reg. 35,588 (July 6, 2001).

126. *Id.*

127. *Id.* at 35,590.

128. *Id.* at 35,589.

129. *Id.* at 35,590.

130. *Id.* at 35,589.

131. *Id.* at 35,593.

132. *Id.*

### 3. *Impacts of These Revisions on Legislative District Boundaries*

Historically, most of the changes represented small changes in population. In this case, “small” means changes on the order of tens of people or even a case in which the change represents about 1,000 people; ultimately, the percent change was less than about 5% of the total population. Because these changes were so small, the practical impact has been so small that no one has really worried about it.

However, as shown in the Dutchess County example, the errors in the 2000 census appear to be much larger.<sup>133</sup> If these apparent errors turn out to have actually happened, then the impacts may no longer be trivial.

As stated earlier, New York State’s constitution requires that state legislative districts be as equal as possible, given the constitutional block-on-border and town-on-border rules.<sup>134</sup> Further, the expectation of equal population between congressional districts on the national level is even higher than for state or local legislative districts.<sup>135</sup> Given these rules and expectations, an error of this size and distance could affect where the boundaries of legislative districts are drawn. This raises the issue of whether a legislative district drawn on the basis of the redistricting data that have been shown to have significant errors<sup>136</sup> really meets the requirements of equal population.

Tompkins County, New York, is currently trying to deal with this exact issue.<sup>137</sup> Based on local knowledge about the community, specifically related to the location of several dormitories at Cornell University, a number of errors in the population of the City of Ithaca and the Town of Ithaca were identified.<sup>138</sup> The county made corrections to the redistricting data to account for these errors.<sup>139</sup> Then the county legislative districts were drawn on the basis of the “corrected” data.<sup>140</sup> The county has been sued over these legislative districts on the basis that they were designed with the official population counts—even though the official population counts were known

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133. POPULATION CHANGE FOR NEW YORK, *supra* note 116, at 9.

134. N.Y. CONST. art. III, § 4.

135. Hedges, *supra* note 20.

136. An error that reports the population of a community as twice the actual population can hardly be considered anything other than significant.

137. See Dan Higgins, *Redistricting Disputes: Town Alleges City, County Cooperation led to Unfair Process*, ITHACA JOURNAL, July 24, 2001, available at <http://www.theithacajournal.com>.

138. Scardamalia conversations, *supra* note 122; see also Higgins, *supra* note 137.

139. Scardamalia conversations, *supra* note 122; Higgins, *supra* note 137.

140. Scardamalia conversations, *supra* note 122; Higgins, *supra* note 137.



to include significant errors.<sup>141</sup> The final decision on this question is still unknown.<sup>142</sup>

Since a final decision in the Tompkins County case, and a precedent—if there is one—is likely to be made sometime in the future, there will probably be more suits over which numbers, revised or official, should be used to draw legislative district boundaries. This issue will be further complicated by the fact that only the municipal population totals will be adjusted.<sup>143</sup> Since there will be no revision to the block-level populations, the question of how these revisions can be applied to small geographic areas remains unanswered. It is likely that the acceptability of any scheme that is devised to revise the sub-municipality populations will ultimately be decided in court.

#### 4. *Non-Legislative District Impacts*

As mentioned above, state and local governments use census data for many purposes other than drawing legislative districts.<sup>144</sup> The usefulness of the data from Census 2000 for these purposes will be affected by the way the Census Bureau chooses to correct the errors that are discovered through CQR.<sup>145</sup> If, as is currently planned, the Census Bureau revises only the total population of a municipality, the other data for the municipality will be erroneous.<sup>146</sup> As with legislative redistricting, the major new problem in Census 2000 with these errors is their scale. For most purposes, any errors that were discovered were on the same scale as the errors resulting from

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141. Higgins, *supra* note 137.

142. See generally *Valentine v. County of Tompkins*, 2001 N.Y. App. Div. LEXIS 10394 (N.Y. App. Div. Nov. 8, 2001). On November 8, 2001, the New York Appellate Division Court concluded:

Regardless of the merits of the parties' respective arguments concerning the accuracy of the method used to correct the Cornell dormitory error, we are of the view that, unless and until the Census Bureau resolves the County's CQRP application, it cannot be determined whether the redistricting plan basically conforms to the census data, a point that cannot be resolved as a matter of law on the submissions presently before this Court. Accordingly, we conclude that plaintiffs' claim based on the Cornell dormitory adjustments is not ripe for summary judgment and, therefore, we remit the matter to Supreme Court to hold that part of the motion directed to that claim in abeyance until the Census Bureau resolves the County's application to correct the error.

*Id.* at \*8-\*9.

143. The Census 2000 Count Question Resolution Program, 66 Fed. Reg. 35,588, 35,590 (July 6, 2001).

144. LAVIN, *supra* note 1, at 37-38.

145. 66 Fed. Reg. 35,588 (July 6, 2001).

146. *Id.* at 35,589. The error results from the potentially large differences in the populations being included. For example, a rural community in upstate New York is likely to be mostly white, while a prison might have a large minority male population. If the prison's population was incorrectly included in a particular town, it would skew the racial and age distributions for the town.

general data inaccuracies and the age of the data. This time, the errors are potentially much greater.

Even though the Census Bureau will issue a statement revising the total population of a community, it will not revise any of the characteristics.<sup>147</sup> As stated earlier, many funding allocation formulae and eligibility criteria are based not on the total population of an area but rather on selected characteristics of the community.<sup>148</sup> Using the example of New York State's Empire Zone, a community's eligibility to participate might be determined on the basis of census tract population, poverty rate, and unemployment rate—none of which will be corrected for errors found through CQR.<sup>149</sup> Therefore, a community may be erroneously determined to be eligible or ineligible to participate in this program. Because of the potential impact that these errors would have on program eligibility, this is another area where litigation might be seen in the future.

## VI. CONCLUSION

As can be seen from this article, state and local governments use decennial census data for many purposes.<sup>150</sup> Some of these uses, such as legislative redistricting, funding allocation, program eligibility determination, tax revenue distribution, and regulatory compliance are legally required.<sup>151</sup> Other uses, such as community and disaster planning, developing new programs, and business attraction are performed not due to any specific legal requirement, but rather as part of the government's general function to protect and improve the quality of life of the area's residents.<sup>152</sup>

One major issue affecting the usefulness of the 2000 census data for state and local governments discussed above is adjustment of various data products to account for people who were not counted in Census 2000.<sup>153</sup> The second major issue is the apparent placement of large group quarters facilities in the wrong geographic area.<sup>154</sup>

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147. *Id.*

148. BRYANT & DUNN, *supra* note 42, at 62-63.

149. N.Y. GEN. MUN. LAW § 958(a)(i) (McKinney 1999 & Supp. 2001). It should be noted that there are other eligibility criteria under which a community may apply. *See id.* § 958(a)(ii) (allowing contiguous areas to be included in the Empire Zone if those areas have good potential to increase business development and create jobs). These other criteria use data and information from sources other than the decennial census. *See, e.g., id.* § 958(c)(v) (natural disaster area) and *id.* § 958(c)(vi)(A) & (B) (closed defense or military base and state-operated hospital). However, there might be communities that qualify only under the section 958(a)(i) criteria.

150. LAVIN, *supra* note 1, at 34-38.

151. *Id.* at 34-36.

152. *Id.* at 36-38.

153. *Id.* at 345-48.

154. *See, e.g., Higgins, supra* note 137.

The combination of heavy and diverse usage of census data and the significant data quality issues leads to several issues that seem ripe for litigation. For example, one of these topics would be access to the adjusted numbers used by the Census Bureau in reviewing the data when it made the decision on the release of adjusted numbers. If the Census Bureau decides to adjust the long-form products to account for non-respondents, there could be litigation related to the use of these numbers—including the population counts—for fund allocations and related uses.

The group quarters placement issue has already led to litigation related to what population is correct to use in drawing legislative districts, such as the proceedings in Tompkins County, New York, described earlier.<sup>155</sup> Depending on the Census Bureau's final decision about reissuing data other than the total population of municipalities, there might be litigation related to the eligibility of affected communities to participate in various programs. There are likely to be additional areas of litigation, but it would take a true seer to predict what issues they will cover.

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<sup>155</sup> *Id.*; see also generally *Valentino v. County of Tompkins*, 2001 N.Y. App. Div. LEXIS 10394 (N.Y. App. Div. Nov. 8, 2001).