

The American Community Survey after 2012: Dead, Crippled, or Alive & Well?

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The American Community Survey after 2012

1. **The ACS: “the very picture of what’s wrong in D.C.”**
2. What Do We Have to Lose?: Uses of the ACS
3. Regarding the Charges
4. Recommendations

Charges Against the ACS

- Unconstitutional
- Invasion of privacy
- Government use of personal information for nefarious ends
- Fine of up to \$5,000 fine for nonresponse causes terror and sense of coercion
- Harassment by Census Bureau field staff

Republican National Committee Resolution

RESOLVED, the Republican National Committee

- recognizes that the Census Bureau has gone far above and beyond the constitutionally intended purpose of enumerating people and is conducting a dangerous invasion of privacy by the overreaching and intimidating implementation of the American Community Survey
- recognizes that the Census Bureau is spending millions of tax dollars to violate the rights and invade the personal privacy of United States Citizens
- supports either the elimination of the American Community Survey or the enactment of HR 3131 sponsored by Representative Ted Poe of Texas . . . , which would make any response to the ACS voluntary

August 6, 2010

House Action on CJS Approps, May 9, 2012

- Poe-Gowdy-King-Scalise-Landry amdt. prohibits use of FY2013 funds to enforce mandatory response to ACS. Passed by voice vote
- Webster-Langford amdt. “prohibits taxpayer funds from being used to conduct the intrusive, unconstitutional American Community Survey . . . , which costs \$2.4 billion to administer.” Passed 232-190-9

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Uses of the ACS

- Federal
 - produce key area estimates (e.g., pop est, PCI), statistical area boundaries, and classifications (SOC)
 - inform the design, implementation, and evaluation of programs and policies
 - distribute over \$450 billion in federal domestic assistance to states and communities
 - provide benchmarks for enforcement of the Voting Rights Act and other civil rights laws

Uses of the ACS

- State and local governments
 - determine the allocation of fiscal and human resources
 - calculate limits to revenue and spending growth
 - redraw legislative districts
- Chambers of commerce and economic development partnerships
 - analyze regional strengths and weaknesses
 - encourage business attraction, expansions, and startups
- Businesses
 - identify markets, select locations, make investment decisions
 - determine product offerings, assess labor markets

Uses of the ACS

- Nonprofit organizations (e.g., hospitals, community service organizations)
 - better understand needs of constituencies
- Researchers
 - identify social and economic dynamics
- Public
 - understand changes in local socioeconomic conditions
 - hold elected officials accountable

Use Case: Federal Reimbursement of State Medicaid Expenditures

- Est. FY2013 obligations = \$284 billion
- Federal medical assistance percentage (FMAP) = 100% less state %
- State % = (state PCI/U.S. PCI) * 45
- except $50\% \leq \text{FMAP} < 83\%$
- PCI = State total income/population
- State income and population are functions of ACS data

Use Case: Redistricting, Voting Rights Act, and State Laws

- Redistricting software relies on ACS
 - Polidata: “The availability of the ACS means that “for the first time, [the redistricting community] will be able to see demographic characteristics, other than race and Hispanic origin, that are relatively current for many levels of census geography, including the current districts” (NCSL redistricting seminar, January 2011)
- Many states prohibit districts that divide “communities of interest”

Use Case: Redistricting, Voting Rights Act, and State Laws

- Voting Rights Act
 - Section 5 – redistricting cannot “pack” or “fracture” minority populations
 - Linguistic minorities included
 - Percent based on citizen voting age population (CVAP)
 - Section 2 – bilingual election materials to be available in jurisdictions with significant number or proportion of language minority citizens
 - Only ACS collects data on citizenship and language
 - VRA Reauthorization of 2006 requires use of ACS

Use Case: Criminal Justice

- Temple University's Center for Security and Crime Science and Azavea are partnering to develop a free tool that uses the ACS and crime data to forecast neighborhood crime in Philadelphia.
- Funded by Predictive Modeling grant from the National Institute of Justice
- "It's going to improve the way in which police departments put cops on dots."
- Aims to free up resources to allow police departments to institute long-term crime prevention efforts

Use Case: State Limits on Taxes and Spending

- As of 2008, 30 states had at least one tax or spending limit
- In 23 states, a limit is determined on the basis of one or two ACS-reliant measures—state personal income growth and state population growth

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Regarding Constitutionality

The constitutionality of the ACS is affirmed by:

- Legal Authority for American Community Survey, U.S. General Accounting Office, April 2002
- United States v. Little, U.S. District Court, D. Delaware., 1971
- United States v. William F Rickenbacker, U.S. Court of Appeals Second Circuit, 1962
- United States v. Moriarity, Circuit Court, S.D. New York, 1901
 - "Respecting the suggestion that the power of Congress is limited to a census of the population, it should be noticed that at stated periods Congress is directed to make an apportionment, and to take a census to furnish the necessary information therefor, and that certain representation and taxation shall be related to that census. This does not prohibit the gathering of other statistics, if 'necessary and proper,' for the intelligent exercise of other powers enumerated in the Constitution."

Regarding Constitutionality

Representative James Madison offering an amendment to the Census Act of 1790:

- “(Congress) had now an opportunity of obtaining the most useful information for those who should hereafter be called upon to legislate for their country if this bill was extended so as to *embrace some other objects besides the bare enumeration of the inhabitants*; it would enable them to adapt the public measures to the particular circumstances of the community”
- “This kind of information all legislatures had wished for; but this kind of information had never been obtained in any country”
- “(I)f the plan was pursued in taking every future census, it would give [Congress] an opportunity of marking the progress of the society, and distinguishing the growth of every interest”

Regarding Constitutionality

Thomas Jefferson said that Congress's consideration of the Census Act of 1800 offered

- “an occasion of great value, and not otherwise to be obtained, of *ascertaining sundry facts highly important to society* . . . [and] presenting a more detailed view of the inhabitants of the United States, under several different aspects,” including
 - age—to measure life expectancy
 - citizenship—to determine the relative contributions of births and immigration to population growth
 - occupation of free males—“to ascertain more completely the causes which influence life and health, and furnish a curious and useful document of the distribution of society in these States, and of the conditions and vocations of our fellow-citizens . . .”

Regarding the Duty to Respond to the ACS

- President George Bush, Census Proclamation, March 6, 1990
 - "I, George Bush, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby declare and make known that under the law it is the responsibility and obligation of every person who usually resides in the United States to take part in the 1990 Census of Population and Housing by truthfully answering all questions on the census forms applying to him or her and to each member of the household to which he or she belongs, and to the residence being occupied."
- President Bill Clinton, Radio Address, April 1, 2000: "(W)hether you have a long or a short form, please fill it out completely and send it in promptly. America is counting on you. This is your future. Don't leave it blank."
- Households lack information about the value of the ACS to their particular community
- Hypothesis: Place-specific information on the benefits of the ACS will have a positive impact on the response rate

Regarding the Duty to Respond to the ACS

George Washington's first State of the Union address:

- "Knowledge is in every country the surest basis of public happiness.
- In one in which the measures of government receive their impressions so immediately from the sense of the community as in ours it is proportionably essential.
- To the security of a free constitution it contributes in various ways
 - by convincing those who are intrusted with the public administration that every valuable end of government is best answered by the enlightened confidence of the people
 - by teaching the people themselves to know and to value their own rights; to discern and provide against invasions of them; *to distinguish between oppression and the necessary exercise of lawful authority; (and) between burdens proceeding from a disregard to their convenience and those resulting from the inevitable exigencies of society*"

Regarding the Fine for Nonresponse or False Response

- Since 1790, the government has had the authority to impose a penalty on any adult who refuses or willfully neglects to answer a census question or deliberately provides a false response
- At present, census law says that the fine for not answering census questions can be up to \$100 and the fine for a false response can be up to \$500, caps set in 1929
- In the 1980s, this dollar amount was superseded by provisions of a uniform sentencing act that established a fine of up to \$5,000 for any misdemeanor or infraction of federal law
- The government has not filed a nonresponse charge since 1960

Regarding Federal Misuse of ACS Data

13 USC §9. Information as confidential

No employee of the Commerce Department “may use the information furnished . . . for any purpose other than the statistical purposes for which it is supplied, (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.”

13 USC §214. Wrongful disclosure of information

“Whoever, being or having been an employee or staff member . . . , having taken and subscribed the oath of office . . . publishes or communicates any information, the disclosure of which is prohibited . . . shall be fined not more than \$5,000 or imprisoned not more than 5 years, or both.”

Regarding Experience of Harassment

- Congressional staff indicate that a majority of complaints regarding the ACS concern an experience of harassment by Census Bureau field staff
- Representative Langford, May 9, 2012:
 - “(T)his is the American Community Survey. And what just landed in your mailbox, if you refuse to answer it, someone will call you. And then they’ll call you, and then they’ll call you, and then they’ll show up at your door and check on you and why you haven’t done it”

Regarding Congressional Actions

Knowledgeable observers indicate:

- If the number of constituent complaints dropped in half, Member animus to the ACS would fall away
- Members of Congress do not have sufficient information regarding the uses of the ACS
- The unexpected support for the Webster amendment forced House leadership to go along

Impacts of a Voluntary ACS

The Census Bureau says that

- to produce sufficiently reliable small area estimates, it needs to maintain the current number of completed surveys
- failure to reach that number would lead to “unacceptable” estimates
- based on field tests, a voluntary ACS would lead to a 20 percentage point drop in the mail-back response rate
- consequently, under a voluntary ACS, to obtain the current number of finished surveys:
 - 23 percent more households would get the ACS form each month
 - 18 percent more households would get a follow-up telephone call
 - 39 percent more households would receive a visit from bureau staff
 - the costs of these efforts would add \$70-100 million to a \$242 million base

[American Community Survey Research and Evaluation Report Memorandum](#), June 23, 2011

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Recommendation 1: Provide Information on Local ACS Uses

- The Census Bureau should provide the public with access to information on ACS uses and benefits by state and place
- With web-spidering technology, the bureau could build a searchable on-line database with links to thousands of national, state, and local ACS applications

Recommendation 2: Create an ACS Partnership Program

- The Census Bureau should create an ACS Partnership Program, modeled on the decennial one
- The bureau would find and train trusted third-party organizations willing to give constituents information and reassurance on ACS data uses and confidentiality

Recommendation 3: Reduce the Fine

- Congress should exempt the Census Bureau from the uniform sentencing statute and so allow it to revert to fine caps of \$100 for nonresponse and \$500 for false statements

Recommendation 4: Reduce Experience of Harassment

- The Census Bureau should review and revise staff protocols and incentives to reduce the incidence of harassment charges
- The bureau might consider creating an ACS nonresponse follow-up hotline or ombudsman

Recommendation 5: Communicate with Congress

- The Census Bureau should increase communications with Members regarding the ACS
- The bureau could provide
 - examples of recent ACS uses in a Member's state or district
 - updates on efforts to address constituent concerns
 - with each ACS release, the new socioeconomic profile of each Member's state or district
 - webinars on the use of the ACS by Member personal offices

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