

April 17, 1997

The Honorable Bud Shuster
Chairman
Committee on Transportation and Infrastructure
2165 Rayburn HOB
Washington, DC 20515

Dear Mr. Chairman:

We strongly support the reauthorization of the Intermodal Surface Transportation Efficiency Act (ISTEA) without significant change to the current program. ISTEA works, and major adjustments are not necessary.

Passage of ISTEA in 1991 unveiled a new era in transportation funding by establishing a critical balance between meeting national policy objectives and providing states and local governments with the flexibility to focus resources to local and regional needs. Establishment of the six core ISTEA programs -- Interstate Maintenance, National Highway System, Bridge, Congestion Mitigation and Air Quality (CMAQ), the transit program, and the Surface Transportation Program (STP) -- specifically addresses a national purpose, while the flexibility provided among these categories gives states and local governments the ability to shift resources to the highest priorities in a given state or region.

A balanced and sound national transportation investment policy is critical for our nation's economy. Therefore, ISTEA reauthorization must maintain the focus on national priorities, the new approach to intermodalism, the requirements for local government and public involvement, and the distinct link to environmental concerns. Shared responsibility for a national system is needed for supporting mobility, connectivity, uniformity, integrity, safety and research.

We all believe that the program must be adequately funded. Throughout this debate, each of us will work to insure that our states and localities receive a sufficient funding level for ISTEA. The critical point, however, is that this debate should focus on the fundamental need for a strong and integrated national transportation system which serves the needs of our states, cities, and counties.

With this in mind, we urge you to preserve the critical elements of the current ISTEA program as Congress works toward our mutual goal of reauthorizing the surface transportation program.

Sincerely,

has been ensure that the 2000 census is above reproach.

The administration's plan for the census represents the most radical departure from the manner in which the census has been conducted for the past 200 years. Serious doubts have been raised about whether the administration is planning a fair census, a fair census, a constitutional census. Many of us believe the administration's plans are not fair, and that they will result in a more accurate census.

Why? For starters, we have already seen how dangerous an error-prone statistical manipulation can be in the census. In 1990, over the objections of the Census Bureau "experts", the Secretary of Commerce refused to adjust the census numbers using statistics because he thought they were inaccurate. He was right. Years after the fact the Census Bureau "experts" discovered their statistically manipulated numbers had overestimated the number of people missed by millions, and because of a computer glitch would have mistakenly caused Pennsylvania to lose a seat in this body.

Just last month, the Census Bureau had to retract their own report extolling the accuracy of their census plans because a computer glitch underestimated the error rates. But even more importantly, unlike 1990, we are not even going to have an actual count of the population. Why? Because the administration only wants to count 90 percent of us, and then guess the rest. How will we ever know what the actual count was, and how will we ever know if statistical adjustment is more accurate? The answer is, we never will. The administration expects us to trust the experts, the same ones that recommended we use faulty numbers to adjust the 1990 census.

But even more fundamental to this debate is the question of whether the administration's plans are legal and constitutional. Many of us believe they are not. We can debate those issues all day and night. It would not matter, because only the courts can decide that, and the courts will decide that, one way or the other. The only question is, when.

Under the bill, we say, have the courts resolve the questions now before we spend \$4 billion on a census that is likely to be held illegal or unconstitutional. Does the Mollohan amendment address those questions? No. Even worse, it strikes the very provisions in the bill that would ensure the courts answer these questions before the fact.

In fact, instead of addressing any of these serious questions surrounding the census, the Mollohan amendment avoids them entirely, and instead tries to say that the only concern surrounding the census is the threat of political manipulation. That is just not the case, though certainly, given the track record of this administration, I can understand how people would be so concerned.

Even if it were the only concern, the Mollohan amendment is not the an-

swer. Why? Because the commission has neither the expertise nor the power to oversee the administration's complicated, convoluted census 2000.

If Members want to know how well an oversight commission works, we have a recent example, the Teamsters election. The taxpayers spent \$21 million on an oversight board for the Teamsters election, and what was the result? They threw out the election and they are going to start all over again, I guess. They are going to ask us to oversee it a second time. They had better ask us real hard about that. If we need any evidence about whether an oversight commission can protect the census, look to the Teamsters. We will spend \$4 billion on the census, and then we will have to start all over again in 2001.

It is the Congress' duty to oversee the census. It is our duty to ensure that it is fair, that it is legal, and that it is constitutional. The Mollohan amendment would have us abdicate that constitutional responsibility.

At a time when the public's faith in the institutions of government is at an all-time low, we have a duty to ensure that the 2000 census is above reproach. Make no mistake about it, the very integrity of the census is at stake here, not to mention a multibillion dollar taxpayer investment.

Mr. Chairman, I urge rejection of the Mollohan amendment.

Mr. MOLLOHAN. Mr. Chairman, I yield such time as she may consume to the distinguished gentlewoman from California [Ms. ROYBAL-ALLARD].

(Ms. ROYBAL-ALLARD asked and was given permission to revise and extend her remarks.)

Ms. ROYBAL-ALLARD. Mr. Chairman, I thank the gentleman for yielding time to me.

I rise in strong support of the Mollohan-Shays amendment.

Mr. MOLLOHAN. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK of Massachusetts. Mr. Chairman, if what the gentleman who just spoke wanted to have happen could happen, I would support it. What he said is look, there is a constitutional question here. Let us, before anything happens, go to the United States Supreme Court and ask them to tell us. They will not do it. There is a core principle of American constitutionalism, which conservatives usually adhere to, which says they do not issue advisory opinions. The United States Supreme Court does not decide until there is a case or controversy, defined repeatedly by Justice Scalia, who was quoted only partially on one point, as injury in fact.

We recently had an effort to try to get around that by getting an advisory opinion in effect on the line item veto. The Supreme Court unanimously said, or almost unanimously said no, you cannot have it. What the gentleman from Kentucky is asking for is impos-

sible. What he says is, we will go to court.

But the Supreme Court will not decide it. Standing is a core conservative principle. I thought the gentleman's amendment was written by William O. Douglas. I thought William O. Douglas had channeled himself through to somebody on the other side, because he is the great liberal justice who says there is a constitutional question, let me at it, I will handle it. What in fact the conservatives said is, no. You talk about judicial activism, this is a monument to judicial activism. This is a constitutional question. We will ask the United States Supreme Court for an advisory opinion. It will not give it to you. It requires an injury in fact.

Here is how you define standing. Here is who could bring this lawsuit. Any resident of a State, resident, not even a citizen, any resident of a State whose congressional district could, not was, could, in fact be changed. If you thought that your district might gain under this, you could go in and get an advisory opinion.

The Supreme Court will not do it. No one familiar with this jurisprudence thinks remotely that you could force this. If it were possible, it would be a good way. But remember, we said, we will have to deal with these first through the electoral process and the political process, and only after the fact can you go to court. Who said that? That was done by conservatives to keep the non-elected judiciary from being too intrusive. What the gentleman's amendment does is to reverse that principle of judicial restraint.

Mr. HASTERT. Mr. Chairman, I yield 2 minutes and 40 seconds to the gentleman from Georgia [Mr. KINGSTON].

Mr. KINGSTON. Mr. Chairman, there is a story of a very learned doctor of theology, a distinguished minister, who was walking through the park one day. He sees a guy who is kind of an itinerant of sorts, and he is reading the Book of Revelations. The doctor of theology says to him, in a condescending, intellectual way, my good man, "Do you have any idea at all of what you are reading in the Book of Revelations?" To which the guy said, "No, I can't say I understand every little bit of it." And he says, "Then sir, why are you reading it?" He said, "Because I know how it ends."

What I am saying, Mr. Chairman, is I do not believe this is a debate of pointy-headed intellectual bean-counters. I think this is a debate about common sense. Here is how I understand this issue. Under the normal U.S. census procedure, you go to a house. You ask how many folks live there. Three. You go to the second house. How many live there? Seven. How many live in the third house? Six. You write down three, seven, six. You come up with 16.

Now, under the Democratic samplematics, you are doing it a little more creatively. You go to the first house and count three, to the second

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house and count seven, and at the third house you go to the drugstore and get yourself a Coca-Cola, and you sample about 20 people there. Then, depending on how many you need, you say, in total, we got maybe 15 to 25 people, depending on how many the folks need back in the office, and that is the count.

Now, let us say that is how this thing works, in layman's terms, so I can understand it. Now think about it in other potential applications. We may want to take a second look at this as Members of Congress. What would be some other potential sampling applications?

How about balancing your check-book? No problems with overdrafts. How about adjusting your income taxes; you know, sending it to the IRS, and when they start complaining, there is a lot of IRS passion going on these days, you can say, "Hey, look, I just used sampling to send you what I owed you."

That has often handicapped us. I will just say that a lot of people sample on their golfing already. On the SAT, for those Members with teenaged kids trying to get into college, sample up the SAT score, 1,500. Speeding tickets: "Officer, I was going about 100, but I was sampling. Just give it to me at 55." That is what this is about.

Mr. Chairman, the 14th Amendment of the United States says it real easy for someone like me and a lot of other folks, that counting the whole number of persons in each State is the way to do your sampling.

Mr. MOLLOHAN. Mr. Chairman, I am pleased to yield 2 minutes to the distinguished gentleman from North Carolina [Mr. WATT].

Mr. WATT of North Carolina. Mr. Chairman, I thank the gentleman for yielding me the time.

Mr. Chairman, I do not believe there is a Member of this House who over the last 5 years has risen in defense of the United States Constitution more than I have. I honestly would tell the Members if I thought statistical sampling was unconstitutional, regardless of the political consequences. I would be rising in support of the Constitution, in defense of the Constitution.

I think this whole constitutional argument is a bogus argument, however, and it fails to read the entire sentence in Article I, Section 2, clause 3 of the Constitution, because that section of the Constitution requires an actual enumeration, but then it goes on to say, "...in such manner as the Congress shall by law direct." And all of these gentlemen who have gotten up and talked about requiring a head count seem to be ignoring the second part of the sentence.

Every single Justice Department that has opined on this issue, the Bush Justice Department, the Carter Justice Department, the Clinton Justice Department, have all said that statistical sampling is fine under the Constitution. Every single court that has ad-

ressed this issue has said that statistical sampling is acceptable under the Constitution.

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The Federal District Court, Eastern District of New York, said it is no longer novel or in any sense new law to declare that statistical adjustment of the census is both legal and constitutional because article I, section 2, requires the census to be as accurate as practical. The Constitution is not a bar to statistical sampling. This is a bogus argument that my colleagues are using. Statistical sampling is constitutional.

I rise in support of the amendment.

Mr. HASTERT. Mr. Chairman, I yield 2 minutes to the gentleman from Iowa [Mr. LATHAM], a member of the subcommittee, who is well familiar with bean counters.

Mr. LATHAM. Mr. Chairman, I guess being in the soybean business, we do count a few beans there.

But I think we have to look at what this debate really is all about. We are talking about the census, but really what it gets down to is money and power. It really gets down to the debate of whether we want those things distributed in a fair and honest manner or if we want someone possibly with political motivation to guess at where those things go.

No. 1, with the money, as everyone here knows, and I do not know if the folks at home know that where the Federal dollars are distributed is based on the count, would we rather have an actual real count to know that we are getting our share of Federal dollars or would we like a bureaucrat here in Washington to guess at it?

As far as power, it has to do with how many Representatives we have from our States. If our State is kind of on the bubble here as to whether we are going to lose a seat or gain a seat, do we want that determined by an actual real count or do we want a bureaucrat here in Washington to make that determination for us and mute our voices? It is simply wrong to go that route.

I do not necessarily say that there is going to be politics involved in this census or this guessing that we are proposing do here, but let us look at the record. Has this administration politicized any other departments in government? Look at the FBI. There are 900 files of private citizens for political reasons in the White House today. They brought in over a million citizens last year for the election and did not check the background, for political reasons, of 180,000 of them. There are 30,000 convicted felons in this country because they politically wanted to get more people registered to vote.

Would they politicize the census? What do my colleagues think? We need an honest, fair, real, legal, and constitutional census, and that means to count real people.

Mr. MOLLOHAN. Mr. Chairman, I yield myself 45 seconds to respond to

the gentleman, if he would stay at the podium.

I would just like to assure the gentleman, that is precisely the reason that is the one argument against the census that cannot be refuted by anyone because it is based upon suspicion. That is why we created this oversight board, which is composed of former Presidents, people who have absolute credibility, to give the census credit, because this kind of a debate about the gentleman just engaged in, in itself, is the greatest undermining of public confidence.

Also, with regard to the efficacy of sampling, our own Speaker GINGER must have believed in the efficacy of sampling because on April 30, 1991, I wrote, in part, to the Secretary of Commerce, I quote, I respectfully request that the census numbers for the State of Georgia be readjusted to reflect the accurate population of the State so as to include the over 100,000 which were not previously included.

Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Texas [Mr. STENHOLM].

(Mr. STENHOLM asked and was given permission to revise and extend his remarks.)

Mr. STENHOLM. Mr. Chairman, although much of the debate on correcting the undercount of the census is centered around the number of people not counted in urban areas, as one who represents a very rural district, I want to highlight the fact that people in rural areas are being missed as well. In fact, some of our rural areas are undercounted to a greater degree than the entire country.

According to the Census Bureau, the net undercount for the Nation in 1990 was 1.6 percent, while rural areas were undercounted at a rate of 5.9 percent. I want to emphasize that accuracy is critical. Let there be no disagreement on that as we prepare for the 2000 census. The Census Bureau should form early and active partnerships with State and local governments so that these governments will have an early opportunity to review census address lists and maps for their area.

This amendment will remove the restrictive language included in the bill and allow the Census Bureau to continue to plan for the 2000 census. Their proposal, which is supported by scientists and statistical experts, should improve accuracy and save costs.

It is fascinating to sit here and listen to colleague after colleague argue against the best science available. I have taken to this well day after day after day, arguing that we should use the best science available, whether we are talking about environmental issues, food safety issues, or census issues. But tonight in this debate, we are being selective as to which science we should use. I find this a fascinating argument to listen to.

I am convinced, absolutely convinced, that statistical sampling is the best method to get an accurate census,

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November 7, 1997

D. Margaret Drury
City Hall Of Cambridge
Cambridge, Massachusetts 02139

Dear Ms. Drury:

I received the resolutions you transmitted on behalf of Councillor Duehay. Regarding the reauthorization of the Intermodal Surface Transportation Efficiency Act (ISTEA), I support passing legislation in this area that balances national and local needs, including environmental concerns, and I will oppose efforts to undermine funding for the Congestion and Mitigation Air Quality program. Indeed, I am pushing for a reauthorization bill that does not radically alter the current ISTEA formulas, and I am also fighting to make sure that Massachusetts is treated fairly. I've enclosed as an example of my efforts in these areas a letter some colleagues and I sent to the Chairman of the Committee on Transportation and Infrastructure, urging him not to make major adjustments to ISTEA.

On another issue addressed by the City Council, I strongly support the use of statistical sampling in the 2000 Census, and am working with a number of colleagues and groups to forge a compromise on this issue, which will likely include an independent board for observation of the 2000 Census. Indeed, I've supported the use of statistical sampling throughout the debate in Congress on this issue. For example, during the House debate of the Commerce, Justice and State appropriations bill I strongly opposed efforts to prohibit the use of statistical sampling, and I voted for an amendment which would have implemented sampling in the 2000 Census. I'm sorry this effort was unsuccessful. I also spoke on the floor against efforts by the Republican leadership to undermine the use of statistical sampling by calling for an expedited judicial review on whether the use of sampling is Constitutional prior to moving forward with a dress rehearsal. And I continue to support negotiations between the White House and Congressional leaders to delink moving forward with a dress rehearsal for statistical sampling from the Supreme Court's possible consideration of this issue. I've enclosed a copy of the statement I made on the floor of the House, which further elaborates my views on this issue. I'll continue to do everything I can to implement the use of statistical sampling in the 2000 Census.

As to the resolution opposing the Senate proposal to eliminate federal disaster relief to states and cities, you are probably aware by now that the final version of the VA-HUD appropriations bill, which I voted for, does not contain harmful legislation eliminating federal disaster relief in the areas referenced in the City Council's resolution. I am glad we reached this favorable outcome, since this legislation would have greatly handicapped communities, counties, and other state agencies -- who own and operate recreational facilities -- from effectively restoring and repairing natural features and facilities damaged during natural disasters.

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D. Margaret Drury

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Finally, regarding the proposed federal legislation to ban any state taxation of the Internet, I am still studying this issue, but I can tell you that I strongly support states' rights in this area, and I am reluctant to have the federal government prevent states from taking actions which they might decide to take. Although the federal government obviously has a duty to prevent anything which would allow one state to reach out beyond its own borders and unfairly impose burdens on other people, absolutely banning states from a particular revenue source is a step I am very reluctant to take, particularly since in recent years Congress has imposed more responsibilities on the states in many areas.

I thank the City Council for its input on these important issues.

Barney Frank

BARNEY FRANK

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Consent Communication #9

S-765

Communication was received from
Representative Barney Frank, transmitting
receipt of the resolution adopted
by the City Council regarding the
reauthorization of the Intermodal
Surface Transportation Efficiency
Act. (ISTEA)

In City Council Session of November 17, 1997

on file

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