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**NATIONAL CONGRESS OF AMERICAN INDIANS**

**TESTIMONY ON CENSUS 2000, IMPLEMENTATION IN INDIAN COUNTRY**

**BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS**

**WASHINGTON, D.C.**

**MAY 4, 1999**

## **I. INTRODUCTION**

Good morning Chairman Campbell, Vice Chairman Inouye and distinguished members of the Senate Committee on Indian Affairs. My name is JoAnn K. Chase. I am the Executive Director of the National Congress of American Indians (NCAI). On behalf of W. Ron Allen, NCAI President and Chairman of the Jamestown S'Klallam Tribe located in Washington State, I would like to thank you for the opportunity to present a statement on concerns facing American Indians and Alaska Natives in the decennial census. NCAI, the oldest, largest and most representative Indian organization in the nation, was organized in 1944 in response to termination and assimilation policies promulgated by the federal government which proved to be devastating to Indian Nations and Indian people throughout the country. NCAI remains dedicated to advocating on behalf of the interests of our 250 member Tribes on a myriad of issues including the efforts to improve the participation and accuracy of the 2000 census count for the American Indian and Alaska Native population.

## **II. FUNDAMENTAL FEDERAL INDIAN LAW AND POLICY**

Any discussion of federal Indian policy must be grounded in fundamental principles which inform federal Indian law and policy. Since the earliest days of our republic, Indian Tribes have been considered sovereign, albeit domestic, nations with separate legal and political existence. Along with states and the federal government, Tribal governments represent one of three enumerated sovereign entities mentioned in the U.S. Constitution. As a result of Constitutional mandate, hundreds of duly-ratified treaties, a plethora of federal statutes, and dozens of Supreme Court cases, it is settled that Indian Tribes have a unique legal and political relationship with the United States. This relationship is grounded in the political, government-to-government relationship and is not race-based. <sup>(1)</sup>

The power of an Indian Tribe to determine questions of its own membership derives from the character of an Indian Tribe as a distinct political entity. The courts have consistently recognized that one of an Indian Tribe's most basic powers is the authority to determine questions of its own membership.<sup>(2)</sup>

The term "Indian" may be used in an ethnological or in a legal sense. If a person is three-fourths Caucasian and one-fourth Indian, that person would ordinarily not be considered an Indian for ethnological purposes.<sup>(3)</sup> Yet legally, such a person may be an Indian. Racial composition is not always dispositive in determining who are Indians for the purposes of Indian law. In dealing with Indians, the federal government is dealing with members of political entities, that is, Indian Tribes, not with persons of a particular race.<sup>(4)</sup> Tribal membership as determined by the Indian Tribe or community itself is often an essential element.

In return for vast Indian lands and resources ceded to the United States, the federal government made certain promises to Indian Tribes including the protection of Indian lands from encroachment, as well as promises to provide in perpetuity various goods and services such as health care, education, housing, and the continued right to self-government. In addition to inherent sovereignty, Tribes benefit from the federal government's "trust responsibility" to them. This responsibility eludes simple definition but is grounded in the oversight and trusteeship of Indian lands and resources by the United States. Using analogous common law principles of trusteeship, the trust responsibility has been determined by federal courts to be similar to the highest fiduciary duty owed a beneficiary by a trustee.

### **III. THE CENSUS AND AMERICAN INDIANS AND ALASKA NATIVES**

On behalf of NCAI member Tribes, I want to thank you for holding this hearing and giving Tribes an opportunity to share their ideas for achieving an accurate count of our people in the 2000 census. On November 21, 1997, NCAI member Tribes strongly recommended by Resolution #SFE-97-081 (attached) that the Census Bureau make every effort to conduct an accurate count of the American Indian and Alaska Native population in the decennial census and that the adequate funding be provided to provide correct state-of-the-art maps, hire local people, and provide training and funds to establish partnerships with Indian Tribes. Subsequently, on October 23, 1998, NCAI member Tribes fully endorsed by Resolution #MRD-98-095 (attached) the Year 2000 Decennial Census and encourages its members to support public cooperation with the Year 2000 Decennial Census by undertaking various employment, promotion, and outreach projects in conjunction with their local government leaders and the Census Bureau. NCAI also resolved to work with the Congress and Administration to ensure that census information remain confidential and will not be used against Tribes, including such purposes as means testing.

It is often said that the census is planned at the national level but carried out at the local level, community by community, across the country. Nowhere is this more true than on Indian reservations and trust lands. The unique character of each Indian Tribe, as well as the unique relationship between Tribes and the Federal government, make it essential that local Tribal leaders and other respected individuals in the community provide substantial guidance on the best methods for taking the census on reservations.

American Indians and Alaska Natives have a significant stake in the outcome of the 2000 census. Opportunities for gainful employment are scarce on many reservations, resulting in unacceptably high rates of unemployment or under-employment. Substandard housing is still prevalent in many areas, leading to overcrowded and therefore unhealthy living conditions. Many reservations are unable to offer challenging educational environments that are the key to realizing a higher standard of living and a better quality of life for our people. These barriers to economic advancement and social fulfillment have affected the health of many Indians, leading to increased rates of alcoholism and family violence in some areas.

As these socio-economic indicators demonstrate, many Indian Tribes must still rely on Federal assistance programs to help improve economic opportunities and living conditions on reservations. A significant portion of Federal aid to these Tribes is based on the information collected in the census.

Listed below are some federal programs that distribute aid to American Indians and Alaska Natives based in whole or in part on census data. These include:

- Job Training Partnership Act
- Native American Employment and Training Programs
- Grants to Local Education Agencies for Indian Education
- Special Programs for the Aging/Title VI Grants to Indian Tribes
- Family Violence Prevention and Services

Mr. Chairman, as you well know, the 1990 census was the first to be less accurate than the one before it. The accuracy of the 1990 census also varied greatly among population subgroups. Continuing a disturbing trend that the Census Bureau first identified with scientific measurements in 1940, people of color and poor people in urban and rural areas were missed at much higher rates than Whites. The undercount of American Indians and Alaska Natives in 1990 was the most disproportionate of all.

According to the post-enumeration survey conducted as part of the 1990 census, the net national undercount was 1.6 percent. By comparison, about 4.5 percent of all Indians (nearly 175,000 people) weren't counted. Most alarming, the census missed 12.2 percent of Indians living on reservations. Like all children, Indian children also were missed at a

higher rate than the population as a whole; 6.2 percent were left out of the census. And young Indian males (age 18 - 29), like their peers in other non-white population subgroups, were more likely to be missed: 6.4 percent weren't counted.

It should come as no surprise, then, that American Indians will not settle for a similar outcome in 2000. We applauded enactment of the Decennial Census Improvement Act in 1992, a law that directed the National Academy of Sciences to conduct a thorough review of the census process and recommend ways to increase accuracy at a reasonable cost. We applauded the Census Bureau's efforts to simplify census procedures and operations, and to form earlier and more-extensive partnerships with local and Tribal officials and community-based organizations. We commend this Committee for seeking the views of those who best know and understand the pulse of their communities and who can recommend the most effective ways to encourage participation in the census.

We are hopeful that this early and sustained effort to improve the census process will lead to a fairer and more accurate count of the American Indian and Alaska Native population in 2000. NCAI has been proud to serve on the Secretary of Commerce's 2000 Census Advisory Committee for much of this decade. This gave us an invaluable opportunity to provide guidance to the Secretary on the best methods for obtaining an accurate count of our people.

We have several recommendations to help ensure an accurate count of American Indians and Alaska Natives, particularly those who live on reservations, in 2000. Let me say at the outset that we have shared these recommendations with Census Bureau and Commerce Department staff on many occasions, and we believe that they have been responsive to our suggestions and concerns.

1. Government-to-Government Relationship: The Census Bureau must abide by the constitutional based government-to-government relationship set out in the President's Executive Order, No. 13084 - Consultation and Cooperation With Indian Tribal Governments. To this end, we urge the Census Bureau to sign its American Indian and Alaska Native Policy which recognizes and commits to a government-to-government relationship with federally recognizes Tribal governments that will be reflected in all its policies, plans, and programs.

2. Tribal Government Liaison Program: The Census Bureau launched the formal Tribal Government Liaison Program in the 1990 census. Prior to that, informal liaison networking with Tribes occurred. For 2000, the Census Bureau has hired Government Partnership Specialists for promotion and outreach to Tribal governments in Indian Country. We understand that American Indians fill some of these positions which are fixed term duties, that is, they expire after September 2001. While we commend the Census Bureau for hiring our people to prepare Tribes in a limited, promotional sense, after 2001, these Partnership Specialists will no longer be available to cultivate and continue the relationship with Tribal governments. Ongoing technical support to Tribes after the census may be particularly vital if the Bureau continues to develop the American Community Survey program, which will collect and disseminate socio-economic data on

our nation's communities every year, instead of once every ten years in the census. More importantly, there will be a void for Tribes during the important phase of receiving and understanding census data, an important aspect of greater participation by Tribal governments. We recommend the Census Bureau to sustain the work of Tribal Government Partnership Specialists throughout all census operations.

In the preparation of the Tribal Government Liaison materials, the Census Bureau should abide by the 1998 Executive Order and craft such materials in a manner that seeks voluntary cooperation from the Tribes and encourages their Tribal Government Liaison to work with the governor's liaisons. Furthermore, the Census Bureau should provide resources to facilitate direct consultation with American Indian and Alaska Native representatives for purposes of seeking input on media campaigns, educational materials, and promotional items.

3. Local Update of Census Addresses (LUCA) Program: Under the LUCA program, Tribal government review of maps and address listing is a critical part of the 2000 census plan to obtain a more accurate census. We understand that many Tribes have not received maps or complete address lists for review nor have they been trained in LUCA - what it is, why it's important, and what method Tribes use to change the maps and lists. Successful LUCA review by Tribal governments presupposes training in procedures and provision of maps and lists in a timely manner. Accurate maps, in particular, with correct boundaries for Tribal lands, are critical to ensuring that the census covers the entire legal territory of each Indian Tribe. We recognize, of course, that many homes on Indian reservations cannot be identified through traditional address styles. That is why on some reservations, enumerators will compile the address list and spot housing units on a map as they visit households to collect the census information. Nevertheless, even in these areas, we believe it will help lay a stronger foundation for a complete count if Tribal Government Liaisons meet with regional census officials this year to review and discuss the breadth of territory and general location of housing units in "list/enumerate" areas. A thorough evaluation of addresses and maps before the census begins will help ensure more complete coverage of households during the count, particularly since the Bureau does not plan to conduct a 1990-style Post Census Local Review program.

4. Recruitment, Hiring, and Training: The Bureau must recruit and hire census employees who represent the communities in which they will work. Simply put, the Bureau must hire American Indians and Alaska Natives to conduct the census among the Tribes in which they are enrolled. This is essential for several reasons.

First, because many Indians living on reservations have limited contact with people outside of their own community, they are extremely wary of strangers who do not share their culture, identity, or way of life. From the initial outreach and education about the importance of the census, to the promotion and advertising campaigns, to conducting the count through door-to-door visits and assistance centers, Indians must reach out to other Indians, providing assurances of confidentiality, offering help to those who cannot read well, building confidence in an undertaking that may seem intrusive or unnecessary to some.

Second, non-traditional or remote housing can make counting on Indian reservations or other trust lands very difficult for those who are unfamiliar with the territory. Many homes do not bear addresses; other structures might house more than one family; still others may be distant both from clearly-marked roads or other homes. Only Indians who have grown up in this territory can conduct the thorough canvassing that will be needed on each and every reservation to ensure an accurate count of people and housing units.

5. Income Limits Waiver: On March 17, 1999, the House Committee on Government Reform approved H.R. 683, legislation sponsored by Congresswomen Carrie Meek that allows welfare assistance recipients to work as temporary 2000 census enumerators without having compensation taken into account for eligibility in any welfare assistance program. We commend bi-partisan support of this effort and urge Congress to enact this important measure as quickly as possible. Because many Indians living on reservations receive Federal benefits, they may be wary of taking census jobs out of fear that they may jeopardize receipt of those benefits. Congress should waive income limits for recipients of Federal aid who serve in temporary positions during the census, in order to encourage as many qualified Indians as possible to apply for census positions.

6. Promotion and Outreach: The Census Bureau must work closely with Tribal leaders to ensure that promotional materials are culturally-sensitive and that appropriate messages are conveyed through the most effective communications methods. We also encourage the Census Bureau to distribute census promotional materials to Tribal Government Liaisons as soon as possible. Educating our people about the importance of the census will take time. We are anxious to begin this effort soon, in order to build confidence in the process and create a positive environment when the census starts a year from now.

7. Questionnaire Assistance Centers: We expect that many Indians living on reservations will require assistance in understanding and completing their census forms. We support the Bureau's plan to establish centers where people can receive help in filling out the questionnaires, but we believe it is unrealistic to expect volunteers to operate these centers. Congress should allocate the necessary funds to hire at least some paid staff to work at the assistance centers. Furthermore, the Census Bureau must consult with Tribal Government Liaisons to identify the best location for these centers on each reservation.

Chairman Campbell, we firmly believe that these recommendations for culturally-sensitive activities guided by knowledgeable Tribal leaders will go a long way toward improving the count of American Indians and Alaska Natives in the 2000 census. At the same time, we recognize that the barriers to an accurate count on Indian reservations are often pervasive and difficult to overcome, no matter how well intentioned the effort. We are not willing to start the next century with an incomplete portrait of our people and their homelands - a portrait that might exclude nearly one out of every eight Indians residing on our diverse Tribal lands.

Earlier in my statement, I mentioned the National Academy of Sciences study requested by Congress and the Bush Administration shortly after it became clear that the 1990 census had fallen far short of expectations. The panel of experts convened by the

Academy, along with the vast majority of experts who have closely studied the census process, reached a sobering conclusion: traditional census methods alone cannot reduce the differential undercount of American Indians, Alaska Natives, and other people of color that has plagued the census for so many decades. The Academy panel concluded that the Census Bureau could "improve the accuracy of the census count ... by supplementing a reduced intensity of traditional enumeration with statistical estimates."

Following that initial recommendation, a subsequent panel of experts convened by the National Academy of Sciences reviewed the specific plan developed by the Census Bureau to combine traditional methods with modern statistical techniques. In 1997, in an interim report, that panel stated: "[W]e do not believe that a census of acceptable accuracy and cost is possible without the use of sampling procedures...". The Bureau's current Census 2000 plan includes an Accuracy and Coverage Evaluation program to measure and correct for inevitable undercounts and overcounts.

In 1998, the Census Bureau conducted a dress rehearsal to evaluate the Census 2000 plan in a census-like environment and identify necessary refinements or changes to methods and operations. One of the three dress rehearsal sites was Menominee County, Wisconsin, which includes the Menominee American Indian Reservation. The census plan implemented at this site included a quality-check survey (called a post enumeration survey, or PES) designed to measure the accuracy of the initial counting effort and provide the basis for correcting any undercounts or overcounts.

The PES showed that the trial census missed 4.6 percent of the American Indian population residing in the test area. Not only was this undercount rate higher than the overall undercount of 3.0 percent for Menominee County, it reflected the persistence of a differential undercount for people of color: that is, the undercount of American Indians was substantially higher than the undercount of Whites, for whom the PES actually measured an overcount of 2.8 percent.

I understand that today's hearing is focusing on census operations in Indian Country. However, it is worth noting that in Sacramento, California, another 1998 dress rehearsal site, the Bureau reported that the trial census missed 8.6 percent of American Indians. Clearly, Mr. Chairman, we must double our outreach efforts in the short time remaining before the census starts, to ensure a more accurate and equitable count of Indians living both on and off Tribal lands.

Mr. Chairman, there are many Tribes that have come to share the belief of these many scientific experts and other independent evaluators, such as the U.S. General Accounting Office, that the census must change because our country is changing. It is a daunting task to locate and count 270 million people with extraordinarily diverse economic, cultural, and social backgrounds, in equally diverse geographic environments and family settings. Intense preparation and counting efforts are critical components of the census, regardless of whether sampling techniques are part of the design. That is why NCAI and the Tribes we represent will do everything possible to assist the Census Bureau in compiling a high-quality address list, preparing and distributing appropriate educational and promotion

materials, and identifying qualified Tribal members to serve as crew leaders, enumerators and outreach specialists. But even a massive, coordinated counting effort will inevitably miss millions of people, far too many to ignore. We must build promising new methods into the traditional process in order to give life to these invisible people.

Therefore, we respectfully urge the Congress to support the Census Bureau's plan for a census that uses sampling and other statistical methods to improve the accuracy of a so-called traditional census count. We are fully aware of the Supreme Court ruling earlier this year, finding that the law prohibits the use of sampling in calculating the population totals used for congressional apportionment. But we are heartened by the Court's recognition that the law does not prohibit, and may require, the use of sampling methods to produce data that can be used for other purposes, such as the allocation of Federal aid.

The Bureau's revised Census 2000 plan, unveiled in February, includes a post enumeration survey of 300,000 representative households nationwide. This quality-check survey is part of a broader program that relies on scientific sampling and statistical methods to eliminate the persistent and highly disproportionate undercount of minorities and the poor. This statistical program was planned for communities of every kind, including on Indian reservations. We believe it represents the only real hope for avoiding the unacceptably high undercount of American Indians and Alaska Natives that occurred in 1990. Congress and the Administration must then ensure that the Bureau has the fiscal and personnel resources it needs to get the job done.

The 1990 census demonstrated that direct counting methods alone will not result in an accurate count of American Indians. It would be foolish to assume that throwing more money toward the same failed techniques will yield a better outcome in 2000.

#### IV. CONCLUSION

Mr. Chairman, thank you for this opportunity to present this statement in connection with this vital issue. In conclusion, it is our position that the unique character of each Indian Tribe, as well as the unique relationship between Tribes and the Federal government, require that Tribal governments are consulted and coordinated with in order to provide substantial guidance on the best methods for taking the census on their reservations. Anything less will have far-reaching negative legal, financial, and statistical implications for the America Indian and Alaska Native population. I again thank you for the opportunity to appear before you today and would be happy to answer any questions you may have.

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#### ATTACHMENTS

1. *See Morton v. Mancari*, 417 U.S. 535 (1974).

2. See *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978).

3. See J. Reid, *A Law of Blood 189-90* (New York: New York University Press, 1970).

4. See *United States v. Antelope*, 430 U.S. 641 (1977); *Morton v. Mancari*, 417 U.S. 535 (1974).