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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

HENRY A. WAXMAN ET AL.,  
Plaintiffs,  
v.  
DONALD L. EVANS,  
Secretary of Commerce,  
Defendant.

CV 01-4530 LGB (AJWx)

ORDER DENYING DEFENDANT'S  
MOTION TO DISMISS OR, IN  
THE ALTERNATIVE, MOTION FOR  
SUMMARY JUDGMENT; ORDER  
GRANTING PLAINTIFFS' MOTION  
FOR SUMMARY JUDGMENT

I. INTRODUCTION

Plaintiffs are sixteen members of the Committee on Government Reform of the United States House of Representatives who seek to compel Defendant, the Secretary of the Department of Commerce ("the Secretary") to disclose certain data from the 2000 Census based on "the Seven Member Rule." See 5 U.S.C. § 2954. By their instant motion, Plaintiffs seek summary judgment. Defendant seeks to dismiss the instant action on the grounds that the Court should exercise its equitable discretion and refrain from hearing the action. In the alternative, Defendant requests that the Court grant summary judgment in his favor on the grounds that the Seven Member Rule does not empower Plaintiffs to compel disclosure of the specific information sought.

For the reasons set forth below, the Court DENIES Defendant's

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1 motion to dismiss or, in the alternative, motion for summary  
2 judgment, and GRANTS Plaintiffs' motion for summary judgment. The  
3 Secretary is thus ordered to release the data to Plaintiffs.

#### 4 II. FACTUAL AND PROCEDURAL BACKGROUND

5 The following facts are undisputed. By letter dated April 6,  
6 2001 and transmitted to the Secretary, eighteen minority members of  
7 the House Committee on Government Reform (the "Committee"),  
8 requested disclosure of adjusted census figures compiled in  
9 connection with the 2000 Census. Pls' Statement of Uncontroverted  
10 Facts and Conclusions of Law ("Pls' Statement") ¶ 1; the  
11 Secretary's Statement of Uncontroverted Facts and Conclusions of  
12 Law ("D's Statement") ¶ 1. These congressmen based their request on  
13 "the Seven Member Rule" set forth in 5 U.S.C. § 2954. Id. In  
14 addition, the letter noted that the Committee has jurisdiction over  
15 matters relating to population and demography, including the  
16 census. Pl's Statement ¶ 1; Secretary's Statement ¶ 2. By return  
17 letter dated June 5, 2001, the Secretary declined to release the  
18 requested census information. Pl's Statement ¶ 2; Secretary's  
19 Statement ¶ 4.

20 On May 21, 2001, Plaintiffs filed the instant action seeking  
21 declaratory and injunctive relief directing the Secretary to  
22 disclose the information requested. Both Plaintiffs and the  
23 Secretary subsequently filed the instant motions.

#### 24 III. LEGAL STANDARDS AND ANALYSIS

##### 25 A. Legal Standards

##### 26 1. Equitable discretion standard

27 Defendants argue that this Court should dismiss the  
28

1 instant action because it arises out of an inter-branch dispute  
2 between the Executive and Legislative Branches. In doing so, they  
3 utilize two cases, United States v. House of Representatives, 556  
4 F. Supp. 150 (D.C. Cir. 1983), and United States v. American  
5 Telephone & Telegraph Co. (AT&T) et al., 551 F.2d 384 (D.C. 1976),  
6 to support this contention. The House of Representatives, 556 F.  
7 Supp. at 150, court noted that "[w]hen constitutional disputes  
8 arise concerning the respective powers of the Legislative and  
9 Executive Branches, judicial intervention should be delayed until  
10 all possibilities for settlement have been exhausted." Id. at 153;  
11 see AT&T, 551 F.2d at 394 (noting that "[a] compromise worked out  
12 between the branches is most likely to meet their essential needs  
13 and the country's constitutional balance.").

14 Defendants also assert that this Court should dismiss the  
15 action because it arises out of an intra-branch dispute within the  
16 Legislative Branch. In a line of case law, the District of Columbia  
17 Circuit has held that "[w]here a congressional plaintiff could  
18 obtain substantial relief from his fellow legislators through the  
19 enactment, repeal, or amendment of a statute, [a] court should  
20 exercise its equitable discretion to dismiss the legislator's  
21 action." Riedle v. Fed. Open Market Committee, 656 F.2d 873, 881  
22 (D.C. Cir.), cert. denied, 454 U.S. 1082 (1981).

23 2. Summary judgment standard

24 Rule 56 of the Federal Rules of Civil Procedure provides  
25 that a court shall grant a motion for summary judgment if "the  
26 pleadings, depositions, answers to interrogatories, and admissions  
27 on file, together with the affidavits, if any, show that there is  
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1 no genuine issue as to any material fact and that the moving party  
2 is entitled to judgment as a matter of law." Fed. R. Civil P.  
3 56(c). Material facts are those that may affect the outcome of the  
4 case. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).  
5 A dispute as to a material fact is genuine "if the evidence is such  
6 that a reasonable jury could return a verdict for the nonmoving  
7 party." Id.

8 The moving party for summary judgment bears the initial burden  
9 of demonstrating the absence of a genuine issue of material fact  
10 for trial. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).  
11 Rule 56(e) of the Federal Rules of Civil Procedure requires that  
12 the party opposing the summary judgment motion "set forth specific  
13 facts showing that there is a genuine issue for trial" in its  
14 opposition papers.

15 B. Analysis

16 Plaintiffs base their request for disclosure of the census  
17 data on "the Seven Member Rule" set forth in 5 U.S.C. § 2954. This  
18 provision entitled "Information to committees of Congress on  
19 request" states that

20 (a) an executive agency, on request of the Committee on  
21 Government Operations of the House of Representatives, or of  
22 any seven members thereof, or on request of the Committee on  
23 Governmental Affairs of the Senate, or any five members  
24 thereof, shall submit any information requested of it relating  
25 to any matter within the jurisdiction of the committee.<sup>1</sup>

26 5 U.S.C. § 2954. Plaintiffs argue that a plain language reading of  
27 the statute requires that the Secretary disclose the requested  
28 information and gives the Secretary no discretion in carrying out

<sup>1</sup> The Committee on Government Reform has since been renamed the Committee on  
Government Operations of the House of Representatives.

1 this act. Plaintiffs' Memorandum of Points and Authorities ("Pls'  
2 Memo") at 6. In so arguing, they emphasize that the statute  
3 utilizes the word "shall," the language of command, and that the  
4 statute explicitly states that executive agencies must submit "any"  
5 information requested of them relating to "any" matter within the  
6 committee's jurisdiction. "The use of the broad adjective 'any'  
7 confirms the expansive scope of the information that the Committee  
8 is entitled to request under the statute." Pl's Memo at 9. Noting  
9 that the adjusted census data are within the scope of the  
10 Committee's jurisdiction, Plaintiffs conclude that "the Seven  
11 Member Rule" mandates that the Secretary disclose the requested  
12 information.<sup>2</sup>

13         Conversely, the Secretary characterizes the action as both a  
14 controversy between the Executive and Legislative branches over  
15 access to information in the possession of executive officials and  
16 between the minority and majority members of the Committee.  
17 Secretary's Opposition to Pl's Motion for Summary Judgment and  
18 Memorandum in Support of Motion to Dismiss, or in the alternative,  
19 Cross-Motion for Summary Judgment ("Secretary's Motion") at 2.  
20 Because "[s]eparation of powers principles dictate that this  
21 controversy be sorted out in the political realm, not in this or  
22 any other court," the Secretary argues that the Court should employ

23  
24         <sup>2</sup> Plaintiffs note that the plain meaning of "the Seven Member Rule" is unambiguous and  
25 that resort to legislative history is therefore unnecessary. Nevertheless, they argue that the legislative  
26 history is consistent with the plain language of the statute and contemplates full disclosure of the  
27 information requested. Pl's Memo at 11. Moreover, as a preemptive strike, they acknowledge the  
28 Department of Justice's longstanding view that the purpose of Section 2954 is to serve as a vehicle  
for obtaining information theretofore embodied in annual routine reports submitted to Congress but  
contend that this view simply represents the executive's litigation position and is based upon an  
erroneous reading of the statute and legislative history. *Id.* at 13.

1 the doctrine of remedial or equitable discretion formulated by the  
2 District of Columbia Circuit and decline to interpret Section 2954,  
3 thereby dismissing the action. In the alternative, he contends that  
4 summary judgment should be granted in his favor because  
5 notwithstanding its broad language, Section 2954 must be construed  
6 narrowly within the statute's legislative history and context. Id.  
7 at 9. The Secretary maintains that Plaintiffs misconstrue the  
8 legislative history and ignore the fact that Section 2954 was part  
9 of an act that repealed statutes mandating the submission of 128  
10 specific reports to the House and Senate Committees. Id. at 10.  
11 "Section 2 [later codified as Section 2954], as the legislative  
12 history makes abundantly clear, was merely intended to preserve  
13 access to the reports abolished by Section 1 of the Act. Id."<sup>3</sup>

14 1. Defendant's position that the Court should refrain  
15 from interpreting Section 2954 and instead should  
dismiss the action

16 a. Inter-branch dispute

17 The Secretary first characterizes the instant  
18 dispute as a "political skirmish" arising out of an inter-branch  
19 dispute between the Executive and the Legislature and argues that  
20 as such, this Court should "be loathe to intervene" and should  
21 instead leave the matter to be resolved between the political  
22 branches. Secretary's Motion at 5. In so arguing, he notes the  
23 "array of political remedies available" to settle inter-branch  
24 disputes and relies upon two cases, United States v. House of  
25

26 <sup>3</sup> To bolster his position, the Secretary also argues that Plaintiffs' sweeping interpretation of  
27 Section 2954 would "raise serious constitutional doubts" because it would require submission on  
28 demand against the Secretary of any information in an agency's files on the request of only seven  
members of the Committee. Secretary's Motion at 17-20.

1 Representatives, 556 F. Supp. 150 (D.C. Cir. 1983), and United  
2 States v. American Telephone & Telegraph Co. (AT&T) et al., 551  
3 F.2d 384 (D.C. Cir. 1976), as support for his position that  
4 judicial intervention is neither appropriate nor necessary in the  
5 instant case. Secretary's Motion at 5-7.

6 In House of Representatives, 556 F. Supp. at 153, a District  
7 of Columbia district court recognized the proposition that courts  
8 have a duty to avoid unnecessarily deciding constitutional issues.  
9 In light of this tenet, the court stated that "[w]hen  
10 constitutional disputes arise concerning the respective powers of  
11 the Legislative and Executive Branches, [judicial intervention  
12 should be delayed until all possibilities for settlement have been  
13 exhausted." Id. This is because "[j]udicial restraint is essential  
14 to maintain the delicate balance of powers among the branches  
15 established by the Constitution." Id. Based on these principles,  
16 the House of Representatives, 556 F. Supp. at 153, court exercised  
17 its discretion and dismissed the action. In a similar vein, the  
18 District of Columbia Circuit, in AT&T, 551 F.2d at 394, emphasized  
19 that when a court "selects a victor, it tends thereafter to tilt  
20 the scales" and that as such, "[a] compromise worked out between  
21 the branches is most likely to meet their essential needs and the  
22 country's constitutional balance." Noting that the parties had  
23 already come close to agreement, the District of Columbia Circuit  
24 remanded the action to the district court for further proceedings  
25 during which the parties were requested to attempt to negotiate a  
26 settlement. Id. at 395.

27 The actions taken by the House of Representatives, 556 F.  
28

1 Supp. at 150, and AT&T, 551 F.2d at 384, courts, however, are  
2 inapplicable to the instant situation for two reasons. Both courts  
3 declined to adjudicate the merits of the disputes before them and  
4 encouraged settlement only after specifically noting the "nerve-  
5 center constitutional questions" that were raised and that would  
6 have to be decided. AT&T, 551 F.2d at 394; see House of  
7 Representatives, 556 F. Supp. at 152 ("Since the controversy which  
8 has led to [this case] clearly raises difficult constitutional  
9 questions in the context of an intragovernmental dispute, the Court  
10 should not address these issues until circumstances indicate that  
11 judicial intervention is necessary."). In each case, the  
12 President's power to maintain the secrecy of information pertaining  
13 to national security and law enforcement clashed with congressional  
14 power to investigate and acquire the information. AT&T, 551 F.2d at  
15 384 (a case in which the Department of Justice attempted to block  
16 a congressional investigation into warrantless national security  
17 wiretaps); House of Representatives, 556 F. Supp. at 153 (a case in  
18 which the Department of Justice attempted to block the House from  
19 proceeding with criminal contempt charges against the administrator  
20 of the Environmental Protection Agency for withholding records  
21 alleged to be subject to executive privilege). Under those  
22 circumstances, "a court seeking to balance the legislative and  
23 executive interests asserted [there] would "face severe problems in  
24 formulating and applying standards." AT&T, 551 F.2d at 394. Here,  
25 in contrast, the Secretary has not premised his refusal to release  
26 the requested census information on executive privilege grounds nor  
27 does it appear that such a position would be viable, given the  
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1 Ninth Circuit's finding that adjusted census records are not  
2 subject to privilege and are, in fact, available for disclosure  
3 under the Freedom of Information Act ("the FOIA"). See Assembly of  
4 the State of Calif. v. United States Dep't of Commerce, 968 F.2d  
5 916, 923 (9th Cir. 1992).<sup>4</sup>

6 Even assuming that the instant controversy raises difficult  
7 constitutional questions on par with those raised in AT&T, 551 F.2d  
8 at 384, and House of Representatives, 556 F. Supp. at 150, and even  
9 though the Court agrees that "[c]ompromise and cooperation, rather  
10 than confrontation, should be the aim of the parties," House of  
11 Representatives, 556 F. Supp. at 153, the Court concludes that  
12 judicial intervention is necessary here because there is no room  
13 for compromise and cooperation. In fact, both the Secretary and  
14 Plaintiffs stated as much during the oral arguments held on the  
15 instant motions. Transcripts of January 3, 2002 Telephonic Hearing  
16 ("Transcripts of Hearing") at 2-7.<sup>5</sup> The record before this Court  
17 reveals that Plaintiffs had made two formal written requests for  
18 the census data and had attempted to get responses from individuals

19  
20 <sup>4</sup>In fact, a district court only recently held that the particular census information requested  
21 here was not subject to withholding under the FOIA. Carter et al. v. United States Dep't of  
22 Commerce, CV 01-868 RE (D. Or. November 20, 2001). This Court hereby takes judicial notice of  
23 this decision. See Federal Rule of Evidence 201(b)(2) (allowing a court to take judicial notice of  
24 facts "capable of accurate and ready determination by resort to sources whose accuracy cannot  
25 reasonably be questioned.")

26  
27 <sup>5</sup>The Secretary took the position that the Solicitor General was currently considering whether  
28 to authorize an appeal of Judge Reddin's recent decision in Carter, *supra* n.4, in which the Court  
held that the census data requested here was subject to disclosure under the FOIA, and that if such  
an appeal were not authorized, "the data will be released as ordered by Judge Redden." The Court  
interprets the Secretary as arguing that based on the Carter decision, Plaintiffs would be able to  
obtain the census data under FOIA and that as such, the instant matter becomes moot. Transcripts  
of Hearing at 7. The Court disagrees with this mootness argument for the simple reason that the  
Carter decision does not resolve the scope of Section 2954, the issue implicated here.

1 at the Office of Legislative and Intergovernmental Affairs to no  
2 avail prior to instituting the instant suit.<sup>6</sup> See Exhibit A to  
3 Decl. of Michael Yeager, April 6, 2001 Letter; Exhibit B, May 16,  
4 2001 Letter. The circumstances thus indicate that judicial  
5 intervention has become necessary to solve this inter-branch  
6 dispute.

7                   **b. Intra-branch dispute**

8                   The Secretary also characterizes the instant action  
9 as arising out of an intra-branch dispute within the Legislature  
10 itself and notes that in a line of cases beginning with Riegle v.  
11 Fed. Open Market Committee, 656 F. 2d 873 (D.C. Cir.), cert.  
12 denied, 454 U.S. 1082 (1981), the District of Columbia Circuit has  
13 refrained from exercising jurisdiction over litigation brought by  
14 individual members of Congress "when such disputes merely reflected  
15 extensions of legislative controversies." Secretary's Motion at 7.  
16 The Secretary concludes that

17                   [r]ather than invoke the authority of the full committee  
18 through a subpoena, or convince a chamber majority of their  
19 need for the information, these members ask the Court to  
20 decide that Section 2954 grants any seven members of the  
21 committee carte blanche with respect to any and all  
22 information within its jurisdiction . . . Separation of  
23 powers concerns dictate that plaintiffs first seek to convince  
24 their majority colleagues of their need for the adjusted  
25 Census figures they seek before requesting a ruling of first  
26 impression from the Court.

27 Id. at 8-9. The Secretary, however, overreads the reach of the

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28                   <sup>6</sup> Though the June 5, 2001 letter sent by the Secretary in response to Plaintiffs' request appears to be show room for compromise, see Exhibit C to Decl. of Yeager ("We are mindful of your stated needs for the adjusted data, however, and we are continuing to consider whether release of the data is warranted. The Department expects to make a final decision in the near future. We will, in any case, continue to work with the Committee on Government Reform . . . to provide the information needed to fulfill Congress' oversight responsibilities."), the oral argument, as mentioned above, clearly indicated that both the Secretary and Plaintiffs believed further negotiation to be an exercise in futility.

1 Riegle, 656 F.2d at 873, line of case law. In Riegle, 656 F.2d at  
2 881, the District of Columbia Circuit created a "doctrine" of  
3 circumscribed equitable discretion" and held that "[w]here a  
4 congressional plaintiff could obtain substantial relief from his  
5 fellow legislators through the enactment, repeal, or amendment of  
6 a statute, this court should exercise its equitable discretion to  
7 dismiss the legislator's action." Significantly, the Riegle, 656  
8 F.2d at 881, court emphasized that this standard would "counsel the  
9 courts to refrain from hearing cases which represent the most  
10 obvious intrusion by the judiciary into the legislative arena:  
11 challenges concerning congressional action or inaction regarding  
12 legislation." Thus, in Riegle, 656 F.2d at 882, the court dismissed  
13 a senator's suit challenging the constitutionality of the Federal  
14 Reserve Act and seeking injunctive relief in the form of absolute  
15 prohibition on voting by reserve bank members of the Federal Open  
16 Market Committee in light of the fact that a bill which would have  
17 accomplished the senator's objective had been introduced in  
18 Congress one year earlier but had not passed. The court noted that  
19 the senator's attempt to prohibit voting by the five Reserve Bank  
20 members "[was] yet another skirmish in the war over public versus  
21 private control of the Committee which has been waged in the  
22 legislative arena since 1933." Id. Under these circumstances, the  
23 court's adjudication of the suit raised the possibility of  
24 "thwarting Congress's will by allowing [] plaintiff to circumvent  
25 the processes of democratic decisionmaking. This meddling with the  
26 internal decisionmaking processes of one of the political branches  
27 extends judicial power beyond the limits inherent in the

28

1 constitutional scheme for dividing federal power." Id. at 881.

2 The cases following Riegle, 656 F.2d at 873, in which the  
3 District of Columbia court applied the equitable discretion  
4 doctrine involved similar situations where congressional plaintiffs  
5 either challenged the constitutionality of legislation or of  
6 actions in light of legislation, see, e.g., Lowry v. Reagan, 676 F.  
7 Supp. 333 (D.C. Cir. 1987) (the War Powers Resolution); Melcher v.  
8 Federal Open Market Committee, 836 F.2d 561 (D.C. Cir. 1987) (the  
9 Appointments Clause); Barnes v. Kline, 759 F.2d 21 (D.C. Cir. 1985)  
10 (the Presentment Clause); Moore et al. v. United States House of  
11 Representatives, 733 F.2d 946 (D.C. Cir. 1984), cert. denied, 105  
12 S. Ct. 779 (1985) (the Tax Equity and Fiscal Responsibility Act);  
13 Crockett, Jr. v. Reagan, 720 F.2d 1355 (D.C. Cir. 1983) (the  
14 Foreign Assistance Act), or otherwise implicated situations where  
15 internal congressional procedures were specifically challenged.  
16 See, e.g., Vander Jaqt et al. v. O'Neill, Jr., 699 F.2d 1166 (D.C.  
17 Cir. 1983) (congressional rules in apportioning seats on House  
18 committees and subcommittees); Gregg et al. v. Barrett, 771 F.2d  
19 539 (D.C. Cir. 1985) (preparation of Congressional Record). In  
20 those instances, the courts held that the rights asserted by  
21 plaintiffs could be vindicated by congressional repeal of the  
22 statute and/or that plaintiffs' disputes were clearly with their  
23 fellow legislators.

24 Here, in contrast, Plaintiffs' rights cannot be vindicated by  
25 congressional repeal of a statute; rather, their rights may  
26 actually be vindicated by the effectuation of a statute. This  
27 effectuation, however, can only come from this Court's adjudication  
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1 of the merits of the dispute. In addition, it is clear that  
2 Plaintiffs' dispute is solely with the Secretary rather than with  
3 their fellow legislators. For this reason, the Secretary's reliance  
4 upon Leach v. Resolution Trust Corp., 860 F. Supp. 868, 874 (D.C.  
5 Cir. 1994) ("The strident controversy in the House surrounding the  
6 debate over the appropriate format and timetable for hearings  
7 pertaining to [the Madison Savings & Loan Association] gave rise to  
8 Representative Leach's filing of the instant complaint."), is  
9 misplaced. In fact, though in dicta, the Leach, 860 F. Supp. at 876  
10 n.7, court contemplated Section 2954 as a viable means by which  
11 "small groups of individual congressmembers can request information  
12 without awaiting formal Committee action."

13 The Secretary's equitable discretion position actually  
14 highlights the need for this Court to reach the merits of the  
15 instant dispute because such a position is ultimately based on the  
16 Secretary's interpretation of Section 2954. For if Plaintiffs'  
17 interpretation of Section 2954 is indeed correct, that provision  
18 would specifically contemplate the situation where Plaintiffs need  
19 not convince a majority of their colleagues of the need for the  
20

21 ' The full text of the Leach, 860 F. Supp. at 868, court's discussion of Section 2954 is as  
22 follows:

23 Moreover to the extent that Representative Leach seeks to suggest that the alleged  
24 domination of the Committee by members of an opposing political party makes such a  
25 collegial remedy an impossibility, the Defendants note that the House has in fact provided  
26 alternative procedures through which small groups can request information without awaiting  
27 formal Committee action. See 5 U.S.C. § 2954 ("An Executive agency, on request of the  
28 Committee on Government Operations of the House of Representatives, or of any seven  
members thereof... shall submit any information requested of it relating to any matter within  
the jurisdiction of the committee.").

28 Id. at 876 n.7.

1 adjusted census figures sought here. In that respect, this Court's  
2 refusal to adjudicate the merits would constitute "meddling with  
3 the internal decisionmaking processes of one of the political  
4 branches" by nullifying congressional intent to empower Plaintiffs  
5 here to obtain the census data sought without having to invoke the  
6 authority of the full committee through a subpoena or convincing a  
7 chamber majority of the need for the information. Riegle, 656 F.2d  
8 at 881. The Court consequently finds dismissal to be unwarranted  
9 and therefore DENIES the Secretary's motion to dismiss. The Court  
10 thus proceeds to the adjudication of the merits of the instant  
11 dispute and the cross-motions for summary judgment.

12           2.     The plain language of Section 2954

13           The Court begins, as it must, with the statutory  
14 language. See Connecticut Nat'l Bank v. Germain, 503 U.S. 249, 253-  
15 54 (1992) (noting that the statutory language is the "cardinal  
16 canon" to be addressed "before all others"); Jeffries v. Wood, 114  
17 F.3d 1484, 1495 (9th Cir.) (en banc) ("In statutory interpretation,  
18 the starting point is always the language of the statute itself."),  
19 cert. denied, 522 U.S. 1008 (1997). The Secretary does not dispute  
20 Plaintiffs' contention that the plain language of Section 2954  
21 appears to compel him to submit the information requested. Pl's  
22 Motion at 6; Secretary's Motion at 9. Nor does it appear that  
23 Plaintiff's position could be disputed. Section 2954 of Title 5, as  
24 previously noted, provides that upon receiving a request by seven  
25 members of the Committee, an executive agency "shall" submit "any"  
26 information requested of it relating to "any" matter within the  
27 jurisdiction of the committee. See 5 U.S.C. § 2954. The term  
28 "shall" is generally imperative or mandatory and "in ordinary usage

1 means 'must' and is inconsistent with a concept of discretion."  
2 Black's Law Dictionary (6th ed. 1990); see Lopez v. Davis, 531 U.S.  
3 230, 231 (2001) (discussing "Congress'[s] use of a mandatory  
4 'shall' . . . to impose discretionless obligations"); Leslie Salt  
5 Co. v. United States, 55 F.3d 1388, 1397 (9th Cir. 1995) (noting  
6 that "as a matter of statutory interpretation, a longstanding canon  
7 holds that the word 'shall' standing by itself is a word of command  
8 rather than guidance"). In addition, though the dictionary term of  
9 "any" is more ambiguous, see Black Law's Dictionary (6th ed. 1990)  
10 (recognizing that the term has a "diversity of meaning and may be  
11 employed to indicate 'all' or 'every' as well as 'some' or 'one'"),  
12 the Supreme Court has stated that read "naturally," the term "any"  
13 means "all." See, e.g., United States v. Gonzalez, 520 U.S. 1, 5  
14 (finding the phrase "any other term of imprisonment" to refer to  
15 "all term[s] of imprisonment").

16 Reading the terms of Section 2954 in their ordinary and common  
17 meanings as this Court must, see Foxgord v. Hirschmoeller, 820 F.2d  
18 1030, 1032 (9th Cir. 1987) ("It is a maxim of statutory  
19 construction that unless otherwise defined, words should be given  
20 their ordinary, common meaning."), the Court finds that the "Seven  
21 Member Rule" requires an executive agency to submit all information  
22 requested of it by the Committee relating to all matters within the  
23 Committee's jurisdiction upon the Committee's request. Here, there  
24 is no dispute that the adjusted census data requested by Plaintiffs  
25 is within the Committee's jurisdiction. Consequently, the plain  
26 language of Section 2954 mandates that the Secretary release the  
27 requested data to Plaintiffs.

28

1                   3.    The legislative history of Section 2954

2                   The Secretary, however, argues that this Court cannot be  
3 "shackled" to the language of Section 2954 but rather must read the  
4 seemingly broad statutory text within the context of its  
5 legislative history. Secretary's Motion at 9. Plaintiffs, on the  
6 other hand, argue that in light of the absence of textual ambiguity  
7 here, resort to legislative history is both unnecessary and  
8 inappropriate. Pl's Reply at 6-10. The Supreme Court has stated  
9 that if no ambiguity in the plain statutory language is discerned,  
10 as in the instant situation, legislative history need not be  
11 consulted. Davis v. Michigan Dep't of Treasury, 489 U.S. 803, 808-  
12 09 n.3 (1989) ("Legislative history is irrelevant to the  
13 interpretation of an unambiguous statute."); see also In re  
14 Catapult Entertainment, Inc., 165 F.3d 747, 753 (9th Cir. 1999)  
15 (noting Supreme Court precedent on issue). "Courts will depart from  
16 this rule, if at all, only where the legislative history clearly  
17 indicates that Congress meant something other than what it said."  
18 City of Auburn v. United States, 154 F.3d 1025, 1029 (9th Cir.  
19 1997). Though this Court has already concluded that the text of  
20 Section 2954 is unambiguous, it will nevertheless review the  
21 provision's legislative history out of an abundance of caution.  
22 Catapult, 165 F.3d at 753-54.

23                   The "Seven Member Rule" derives from Section 2 of the Act of  
24 May 29, 1928, 45 Stat. 996 § 2. The first section of that act  
25 repealed certain statutes requiring the submission of reports to  
26 Congress by public officials. The Bureau of Efficiency considered  
27 these reports to be obsolete and/or useless, either because the  
28 information contained in the reports was already being submitted to

1 other agencies or because the usefulness of the information was  
2 being "materially lessened" by the size of the statements required  
3 by the statutes. Exhibit A to Decl. of Zick in Support of  
4 Secretary's Motion, S. Rep. No. 1320 at 1-4; H.R. Rep. No. 1757 at  
5 2-6. In referring to the second section of the Act of 1928, both  
6 the Senate Report and the House Report state that

7 [t]o save any question as to the right of the House of  
8 Representatives to have furnished any of the information  
9 contained in the reports proposed to be abolished, a provision  
10 has been added to the bill requiring such information to be  
11 furnished to the Committee on Expenditures in the Executive  
12 Departments or upon the request of any seven members thereof.

13 Exhibit A to Decl. of Zick in Support of Secretary's Motion, S.  
14 Rep. No. 1320 at 4; H.R. Rep. No. 1757 at 6. Thus, the legislative  
15 history shows that Congress understood Section 2 of the act to  
16 preserve legislators' access to the information formerly contained  
17 in the discontinued reports, thus supporting the Secretary's  
18 parochial reading of Section 2954.

19 Both the Senate and House Reports, however, also contain the  
20 following passage in their "Conclusions" section:

21 The committee also desires to make the observation that it is  
22 easy in the enactment of general legislation on some subject  
23 for some one to suggest that a special report be made to  
24 Congress. Little attention is given to the character of report  
25 that should be submitted, and the legislation goes in the  
26 statute books. The department makes the character of report  
27 that it thinks will fit the legal requirement, and often it is  
28 entirely valueless for the purpose intended. The reports come  
in, they are not valuable enough to be printed, they are  
referred to committee, and that is the end of the matter. The  
departmental labor in preparation is a waste of time and the  
files of Congress are cluttered up with a mass of useless  
reports. If any information is desired by any Member or  
committee upon a particular subject, that information can be  
better secured by a request made by an individual Member or  
committee, so framed as to bring out the special information  
desired. It would be helpful if in the future, committees  
would be more careful as to the character and extent of  
requiring that reports be made to Congress in connection with  
the administration of legislation.

1 Exhibit A to Decl. of Zick in Support of Secretary's Motion, S.  
2 Rep. No. 1320 at 4; H.R. Rep. No. 1757 at 6. Pointing to this  
3 passage, Plaintiffs conclude that "the House and Senate Reports  
4 evidence a clear preference for having legislators and committees  
5 make specific individual requests for information rather than  
6 compelling the standardized production of 'useless reports.'" Pl's  
7 Motion at 12. Plaintiffs argue that Section 2954 constituted a  
8 "quid pro quo" by which members of Congress could continue to  
9 possess oversight over agencies in exchange for repealing statutes  
10 requiring the submission of specific annual reports. Transcripts of  
11 Hearing at 17.

12       Based on the foregoing, the Court concludes that "far from  
13 clarifying the statute, the legislative history only muddies the  
14 waters." Gonzalez, 520 U.S. at 6. For though it is clear that  
15 Section 2954 "makes it possible to require any report discontinued  
16 by the language of [the Act of 1928] to be resubmitted to either  
17 House upon its necessity becoming evident to the membership of  
18 either body," S. R. No. 1320 at 4, such a recognition does not  
19 necessarily mean that the provision was designed to merely  
20 accomplish that narrow aim. In light of the fact that the purposes  
21 and policies of Section 2954 are not clearly expressed by the  
22 legislative history, this Court follows the text rather than the  
23 legislative history. Gonzalez, 520 U.S. at 8 (quoting United States  
24 v. Wiltberger, 5 Wheat. 76, 95-96 (1820) (noting that "[w]here  
25 there is no ambiguity in the words, there is no room for  
26 construction. The case must be a strong one indeed, which would  
27 justify a court in departing from the plain meaning of words . . .  
28 in search of an intention which the words themselves did not

1 suggest.")). Because the statute speaks clearly and its plain  
2 language does not contravene any clear legislative history, (this  
3 Court "must hold Congress to its words." Catapult, 165 F.3d at 754  
4 (citation omitted)).<sup>8</sup>

5 4. Serious constitutional doubts

6 Finally, the Secretary argues that Plaintiffs'  
7 interpretation of Section 2954 raises serious constitutional doubts  
8 because such an interpretation "requires submission on demand by  
9 the Secretary of any information in the agency's files on the  
10 request of only seven members of the House Committee on Government  
11 Reform." Secretary's Motion at 17-18 (emphasis in original). He  
12 concludes that two substantial questions are raised which require  
13 rejection of Plaintiffs' interpretation. Id. at 18.

14 First, the Secretary states that Plaintiffs' interpretation  
15 "admits of not a single exception to disclosure" so that "an agency  
16 in possession of material deemed sensitive for national security or  
17 other reasons, or which is otherwise protected by Executive  
18 privilege, would have no choice, in Plaintiffs' view, but to make  
19 the requested disclosure." Id. This, however, misstates Plaintiffs'  
20 position for they respond that "nowhere have [they] or anyone else  
21 ever suggested that a statute trumps the Constitution. We recognize  
22 the settled rule that a valid constitutional claim of Executive  
23 Privilege can defeat a congressional demand for information,  
24

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25 <sup>8</sup> The Secretary also points to the "congressional design" of Section 2954 as support for the  
26 "limited nature" of the provision. Secretary's Motion at 10. Specifically, he notes that Section 2954  
27 is part of a subchapter entitled "Reports." Id. The Supreme Court, however, has cautioned against  
28 using titles of statutes and headings of a section to limit the plain meaning of the text. See  
Brotherhood of R.R. Trainmen v. Baltimore & Ohio R. Co., 331 U.S. 519, 528-29 (1947). Moreover,  
the Court finds some merit in Plaintiffs' assertion that "[i]f titles are used by the Court as an  
interpretative guide, then surely more directly relevant is the title of § 2954 itself, which is: "§ 2954,  
Information to committees of Congress on request." Pl's Motion at 9.

1 regardless of whether the demand is made by subpoena or under a  
2 statute." Pl's Reply at 11. In Soucie v. David, Jr., 448 F.2d 1067,  
3 1072 n. 9 (D.C. Cir. 1971), the District of Columbia Circuit  
4 recognized that Congress has frequently exercised the power to  
5 compel disclosure to itself in statutes requiring executive  
6 officers to transmit information to Congress and specifically cited  
7 to Section 2954. Importantly, it also noted that "the doctrine of  
8 executive privilege is to some degree inherent in the  
9 constitutional requirement of separation of powers," id. at 1072,  
10 and stated that if an act seems to require disclosure and if the  
11 government makes an express claim of executive privilege, it would  
12 become necessary for a court to consider whether the disclosure  
13 provisions of the act exceeds the constitutional power of Congress  
14 to control the actions of the executive branch. Id.

15       Second, the Secretary argues that Plaintiffs' interpretation  
16 is "all the more unusual, and constitutionally suspect, because  
17 this absolute power is proposed to be lodged not in any committee,  
18 or subcommittee, but in a mere fraction of the membership of only  
19 two of Congress's more than 40 full committees." Secretary's Motion  
20 at 19. "Odder still, [Plaintiffs] do not explain why Congress would  
21 vest such powers in a small number of minority members of the  
22 committee." Id. However, as the Leach, 860 F. Supp. at 876 n.7,  
23 court surmised, Section 2954 might have been contemplated by  
24 Congress as an antidote to possible domination of the legislative  
25 body by members of an opposing political party. Moreover, as  
26 Plaintiffs point out, the Secretary's own evidence submitted in  
27 support of his motion for summary judgment shows that "many  
28 committees and subcommittees have given a single member of

1 Congress—the committee chair—unilateral power to determine when to  
2 issue a subpoena.” Pl’s Reply at 13; Exhibit C to Decl. of Zick in  
3 Support of Secretary’s Motion at 19 (“The rules or practices of  
4 standing committees may restrict the issuance of subpoenas only to  
5 full committees or in certain instances allow issuance by a  
6 committee chairman alone, with or without the concurrence of the  
7 ranking minority member.”).

8 In conclusion, the Court finds that interpreting Section 2954  
9 according to its plain language does not raise serious  
10 constitutional doubts nor does it otherwise produce a “patently  
11 absurd result.” Catapult, 165 F.3d at 754.

12 IV. CONCLUSION

13 Based on the foregoing analysis, the Court hereby DENIES  
14 Defendant’s motion to dismiss or, in the alternative, for summary  
15 judgment. Because the facts are undisputed, there are no genuine  
16 issues of dispute to preclude a grant of Plaintiffs’ request for  
17 summary judgment. Moreover, because the foregoing analysis shows  
18 that Plaintiffs are entitled to judgment as a matter of law, the  
19 Court hereby GRANTS Plaintiffs’ motion for summary judgment. The  
20 Secretary is thus ORDERED to release the requested census data to  
21 Plaintiffs.

22  
23  
24 IT IS SO ORDERED.

25  
26 Dated: January 18, 2002

27   
28 LOURDES G. BAIRD  
United States District Judge