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

II. FACTUAL AND PROCEDURAL BACKGROUND

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

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

III. LEGAL STANDARDS AND ANALYSIS

A. Legal Standards

1. Equitable discretion standard

Defendants argue that this Court should dismiss the

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

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

2. Summary judgment standard

Rule 56 of the Federal Rules of Civil Procedure provides that a court shall grant a motion for summary judgment if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is

no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). Material facts are those that may affect the outcome of the case. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A dispute as to a material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Id.

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

B. Analysis

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

> [a]n executive agency, on request of the Committee on Government Operations of the House of Representatives, or of any seven members thereof, or on request of the Committee on Governmental Affairs of the Senate, or any five members thereof, shall submit any information requested of it relating to any matter within the jurisdiction of the committee.[1]

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

[1] The Committee on Government Reform has since been renamed the Committee on Government Operations of the House of Representatives.

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

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

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[2] Plaintiffs note that the plain meaning of "the Seven Member Rule" is unambiguous and that resort to legislative history is therefore unnecessary. Nevertheless, they argue that the legislative history is consistent with the plain language of the statute and contemplates full disclosure of the information requested. Pl's Memo at 11. Moreover, as a preemptive strike, they acknowledge the 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.

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

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

a. Inter-branch dispute

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

[3] To bolster his position, the Secretary also argues that Plaintiffs' sweeping interpretation of Section 2954 would "raise serious constitutional doubts" because it would require submission on 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.

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

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

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

Supp. at 150, and AT&T, 551 F.2d at 384, courts, however, are inapplicable to the instant situation for two reasons. Both courts declined to adjudicate the merits of the disputes before them and encouraged settlement only after specifically noting the "nerve-center constitutional questions" that were raised and that would have to be decided. AT&T, 551 F.2d at 394; see House of Representatives, 556 F. Supp. at 152 ("Since the controversy which has led to [this case] clearly raises difficult constitutional questions in the context of an intragovernmental dispute, the Court should not address these issues until circumstances indicate that judicial intervention is necessary."). In each case, the President's power to maintain the secrecy of information pertaining to national security and law enforcement clashed with congressional power to investigate and acquire the information. AT&T, 551 F.2d at 384 (a case in which the Department of Justice attempted to block a congressional investigation into warrantless national security wiretaps); House of Representatives, 556 F. Supp. at 153 (a case in which the Department of Justice attempted to block the House from proceeding with criminal contempt charges against the administrator of the Environmental Protection Agency for withholding records alleged to be subject to executive privilege). Under those circumstances, "a court seeking to balance the legislative and executive interests asserted [there] would "face severe problems in formulating and applying standards." AT&T, 551 F.2d at 394. Here, in contrast, the Secretary has not premised his refusal to release the requested census information on executive privilege grounds nor does it appear that such a position would be viable, given the

Ninth Circuit's finding that adjusted census records are not subject to privilege and are, in fact, available for disclosure under the Freedom of Information Act ("the FOIA"). See Assembly of the State of Calif. v. United States Dep't of Commerce, 968 F.2d 916, 923 (9th Cir. 1992).[4]

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

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

[5] The Secretary took the position that the Solicitor General was currently considering whether 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.

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

b. Intra-branch dispute

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

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

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

[6] 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.

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

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

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

Here, in contrast, Plaintiffs' rights cannot be vindicated by congressional repeal of a statute; rather, their rights may actually be vindicated by the effectuation of a statute. This effectuation, however, can only come from this Court's adjudication

of the merits of the dispute. In addition, it is clear that Plaintiffs' dispute is solely with the Secretary rather than with their fellow legislators. For this reason, the Secretary's reliance upon Leach v. Resolution Trust Corp., 860 F. Supp. 868, 874 (D.C. Cir. 1994) ("The strident controversy in the House surrounding the debate over the appropriate format and timetable for hearings pertaining to [the Madison Savings & Loan Association] gave rise to Representative Leach's filing of the instant complaint."), is misplaced. In fact, though in dicta, the Leach, 860 F. Supp. at 876 n.7, court contemplated Section 2954 as a viable means by which "small groups of individual congressmembers can request information without awaiting formal Committee action."[1]

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

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

> Moreover to the extent that Representative Leach seeks to suggest that the alleged domination of the Committee by members of an opposing political party makes such a collegial remedy an impossibility, the Defendants note that the House has in fact provided alternative procedures through which small groups can request information without awaiting formal Committee action. See 5 U.S.C. § 2954 ("An Executive agency, on request of the 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.").

Id. at 876 n.7.

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

2. The plain language of Section 2954

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

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

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

3. The legislative history of Section 2954

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

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

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

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

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

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

> The committee also desires to make the observation that it is easy in the enactment of general legislation on some subject for some one to suggest that a special report be made to Congress. Little attention is given to the character of report that should be submitted, and the legislation goes in the statute books. The department makes the character of report that it thinks will fit the legal requirement, and often it is 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.

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

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

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

4. Serious constitutional doubts

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

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

[8] The Secretary also points to the "congressional design" of Section 2954 as support for the "limited nature" of the provision. Secretary's Motion at 10. Specifically, he notes that Section 2954 is part of a subchapter entitled "Reports." Id. The Supreme Court, however, has cautioned against 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.

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

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

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

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

IV. CONCLUSION

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

IT IS SO ORDERED.

Dated: January 18, 2002

Lourdes G. Baird

LOURDES G. BAIRD
United States District Judge