

PUBLIC INTEREST

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**Testimony of
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**Before the United States House Subcommittee on the
Constitution and Civil Justice**

Questions Regarding the 2020 U.S. Census

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I am President and General Counsel for the Public Interest Legal Foundation, a non-partisan charity devoted to promoting election integrity and preserving the constitutional decentralization of power so that states may administer their own elections. I also served as an attorney in the Voting Section at the Department of Justice. I have brought multiple enforcement actions under the Voting Rights Act and brought dozens of election cases relying on Census population data.

The Trump Administration's decision to include a citizenship question in the 2020 Census is the right decision. Justice Department officials charged with enforcing the Voting Rights Act will enjoy more precise citizen population data and thus enhance enforcement of civil rights laws. A census that collects robust citizenship data also will give policy makers the tools to curb the real, everyday foreign influences in our political system – namely ending political subsidies in legislative bodies for areas with large alien populations.

Returning the citizenship question to the Census also will potentially aid African-American communities who have suffered and lost political representation when legislative line drawers do not have precise and robust citizenship data.

Precise Citizenship Data Helps Enforcement of the Voting Rights Act

Having access to robust and precise citizenship data will be extremely useful for the Justice Department's enforcement of the Voting Rights Act. Without robust citizenship data, ambiguities and conjecture can impair enforcement of the Voting Rights Act, particularly in smaller jurisdictions. Simply because a town or county is too small to have reliable citizenship data in the Census, it should not be acceptable for Justice Department lawyers to overlook potential enforcement actions in those areas. But for years, that is precisely what happened. Small jurisdictions got a pass

when it came to compliance with the Voting Rights Act. The internal advocates for this policy were wrong, but unfortunately are still employed by the Department.

Consider the case of Lake Park, a small town in Palm Beach County, Florida. The record will establish that I was one of the lawyers who signed the Voting Rights Act complaint in the case of *United States v. Town of Lake Park*.¹ In the 2000 Census, 48 percent of Lake Park residents were black, but in 2009 not a single black candidate for town council had ever won a seat in the at-large voting plan. A large non-citizen Haitian population, however, made it less than clear what the precise black citizenship population was in Lake Park. Remember, the Department may not bring a Voting Rights Act case under Section 2 unless a district may be drawn where minority *citizens* comprise a compact majority. **Yet one could not turn to the Census in 2009 for precise citizenship data because precise citizenship data were not collected in the 2000 Census.**

Without robust citizenship Census data, Voting Rights Act enforcers will necessarily operate in a degree of statistical fog. While it is true that the United States alleged in the Lake Park complaint a sufficiently large black citizenship population to justify bringing the case, the extraordinarily large black population (more than 40%) made that an easier assertion to make. Nonetheless, it is impossible to know the precise citizenship rate in Lake Park in 2009 because the citizenship data were not collected in the 2000 Census. There also will be plenty of jurisdictions where the statistical fog created by the lack of robust citizenship data will mean minorities in some jurisdictions may never enjoy effective protections against vote dilution in the Voting Rights Act.

Some have attacked President Trump's decision to collect robust citizenship data in the 2020 Census and questioned the justifications for that improvement made

¹ <https://www.justice.gov/crt/cases-raising-claims-under-section-2-voting-rights-act-0#lakepark>

by Acting Assistant Attorney General John Gore, namely that it would help enforcement of the Voting Rights Act. As I have shown in the Lake Park case, those critics are flat wrong. Mr. Gore is squarely correct. Collecting robust citizenship data in the 2020 Census aids enforcement of the Voting Rights Act.

DOJ Needs Citizen Data for Voting Rights Act Enforcement

An elementary review of DOJ documents demonstrates that these critics of an improved 2020 Census are wrong. Understand, unlike Lake Park, the Voting Rights Act cases discussed below involve larger jurisdictions where better Census *estimates* are available regarding citizen population, but that is not the same as a robust and precise citizen enumeration in the 2020 Census. Simply, the Department of Justice has for many years relied on *estimated* citizenship rates to drive Voting Rights Act enforcement. Because citizenship rates matter when enforcing the Voting Rights Act, they had to use something. But using robust citizenship data will promote a more effective, comprehensive and constitutional enforcement of the Voting Rights Act. Critics who claim otherwise should take the time to actually read the complaints the Department has filed over the years. Remember, if you cannot design a legislative district with the requisite number of *citizens*, then you cannot constitutionally assert a Section 2 claim.

The DOJ's Voting Rights Act lawsuit in *United States v. Euclid City School District* reveals a reliance on citizenship rates in Section 2 lawsuits involving legislative districts. The complaint of the Department of Justice says, "The at-large method of electing the Euclid Board of Education dilutes the voting strength of African-American *citizens*, in violation of Section 2 of the Voting Rights Act...." Complaint at 2, *United States v. Euclid City School District Board of Education, OH*, No. 1:08-cv-02832 (N.D. Ohio 2008) (emphasis added).

The complaint further states, “the at-large election system for electing Defendant Euclid City School District Board of Education...result[s] in African-American *citizens* being denied an opportunity equal to that afforded to other members of the electorate....” and “Unless enjoined by order of this Court, Defendants will continue to conduct elections for the Euclid City School District Board of Education under the present method of election that denies African-American *citizens* the opportunity to participate equally with white *citizens*....” *Id.* at 4 (emphasis added).

In *United States v. The School Board of Osceola County*, the Department of Justice again relied on citizenship data estimates to enforce Section 2 of the Voting Rights Act. In that Complaint, the DOJ alleged, “The Hispanic population of the county is sufficiently numerous and geographically compact that a properly apportioned single-member district plan for electing the School Board can be drawn in which Hispanic persons would constitute a majority of the *citizen voting-age population* in one out of five districts.” Complaint at 3-4, *United States v. The School Board of Osceola County*, No. 6:08-cv-00582 (M.D. Fla. 2008) (emphasis added).

Another case where citizenship was relied on to enforce the Voting Rights Act was *United States v. Georgetown County School District, et. al.* The DOJ Complaint alleged, “The African-American population of the county is sufficiently numerous and geographically compact that a properly apportioned single-member district plan for electing the Defendant Board can be drawn in which black *citizens* would constitute a majority of the total population, and voting age population in three districts.” Complaint at 3, *United States v. Georgetown County School District, et. al.*, No. 2:08-cv-00889 (D.S.C. 2008) (emphasis added). The Cause of Action section of the brief seeks relief against practices “resulting in African-American *citizens* being denied an opportunity equal to that afforded to other members of the electorate

to participate in the political process and elect representatives of their choice....” *Id.* at 5 (emphasis added). Yet again, the DOJ affirmed that citizenship data is the proper data set to be used in determining liability. Obtaining robust and precise citizenship data will aid enforcement of the Voting Rights Act.

The DOJ complaint in *United States v. City of Boston*, another Voting Rights Act enforcement case, makes explicit reference to citizenship data. The DOJ Complaint in this matter was based explicitly on “*citizen voting age population.*” The second cause of action alleges, “Defendants’ conduct has had the effect of denying limited English proficient Hispanic and Asian American *voters* an equal opportunity to participate in the political process and to elect candidates of their choice on an equal basis with other citizens in violation of Section 2 of the Voting Rights Act.” Complaint at 6, *United States v. City of Boston, MA*, No. 05-11598 (D. Mass. 2005) (emphasis added).

The prayer for relief section of the Boston complaint sought relief “to ensure that Spanish-speaking *citizens* are able to participate in all phases of the electoral process,” and to prevent Boston “from implementing practices and procedures that deny or abridge the rights of limited English proficient Hispanic and Asian American *citizens* in violation of Section 2 of the Voting Rights Act.” *Id.* at 7 (emphasis added). The prayer for relief also sought an injunction “[r]equiring Defendants to devise and implement a remedial program that provides Boston’s limited English proficient Hispanic and Asian American *citizens* the opportunity to fully participate in the political process consistent with Section 2 of the Voting Rights Act.” *Id.* at 7-8 (emphasis added). Knowing the precise number of citizens of limited English proficiency in each precinct allows the Department of Justice as well as local election officials to more efficiently allocate poll workers who speak a foreign language in Section 203 related matters similar to the Boston case.

In *United States v. Osceola County*, discerning the concentration of Hispanic citizens was central to this Voting Rights Act case. The DOJ alleged, “In conducting elections in Osceola County, Defendants have failed to ensure that all Hispanic *citizens* with limited-English proficiency have an equal opportunity to participate in the political process and to elect the representatives of their choice,” and “The effects of discrimination on Hispanic *citizens* in Osceola County, including their markedly lower socioeconomic conditions relative to white *citizens*, continue to hinder the ability of Hispanic *citizens* to participate effectively in the political process in county elections.” Complaint at 4, *United States v. Osceola County*, No. 6:05-cv-1053 (M.D. Fla 2005) (emphasis added).

The Complaint specifically alleged, “Upon information and belief, a majority of Board members in 1994-96 recognized that the growth of the Hispanic population would result in Hispanic voters achieving the ability to elect a candidate of their choice in one or more districts under the single-member district method of election,” and “In 1996, a Hispanic candidate ran in Board of Commissioners District One, and was elected to the Board under the single-member district method of election.” *Id.* at 5-6. Further, “In 2001, the Board of Commissioners appointed a redistricting committee to redistrict the county’s residency districts. Commissioners expressed concern about the possibility they would be forced to change their method of election in the future, and the residency district plan was adopted with this concern in mind.” *Id.* at 6. The Complaint added, “The residency districts adopted by the Board in 2001 split heavily Hispanic population concentrations.” *Id.* Consequently, the Complaint alleged that the method for electing the Board “has the effect of diluting Hispanic voting strength, resulting in Hispanic *citizens* ... having less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice, in violation of Section 2.” *Id.* at 6-7. (emphasis

added). If the Hispanics in the Osceola case in the illustrative districts were in fact largely aliens, the United States could not have properly brought the case.

Ascertaining with certainty the citizenship status of the protected minority is an essential element to a Section 2 claim. If the Voting Rights Act allowed a cause of action under Section 2 to protect minority aliens, the constitutionality of such an action would be extremely suspect.

It is simply wrong to claim that enhanced robust citizenship data would not aid enforcement of the Voting Rights Act. Correctly ascertaining the citizenship populations, particularly in areas where the protected racial minority has sizeable numbers of non-citizens distributed through the geographic area in question, would greatly aid Justice Department staff in correctly and precisely enforcing the Voting Rights Act.

Lack of Citizenship Data Hurts African-American Representation

Minority voters in small communities are not the only ones impacted by a Census that fails to collect robust citizenship data. Because of the lack of robust citizen data in the Census, African-Americans have steadily lost power and seats in district line drawing in areas near a large Hispanic population containing non-citizens.

Consider Los Angeles. As time passed, black representation was diluted by legislative line drawing. Hispanics gained seats at the expense of black political representation. Unfortunately, this transfer of power was aided in part by lack of robust citizenship data in the Census. The problem is that the erosion of African-American council seats in Los Angeles, for example, **is fueled by the use of total population in legislative line drawing**. The lack of robust citizenship data in the Census means line drawers in Los Angeles use total population to draw legislative lines because they have no choice. Over time, black voters had their political power

diluted and diminished because non-citizens were being counted for legislative line drawing.

Any urban community where long-established black communities face an influx of citizen and non-citizen Hispanic populations will experience this same erosion of political power, an erosion accelerated by the lack of robust citizenship data in the Census.²

Thank you again for the opportunity to submit testimony on this incredibly important matter.

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Respectfully submitted,
J. Christian Adams

² I discuss this in detail in “Trump Census Citizenship Question Helps Black Americans,” at *PJ Media*. <https://pjmedia.com/jchristianadams/trump-census-citizenship-question-helps-black-americans/?print=true&singlepage=true>. March 30, 2018.