

QUESTIONS REGARDING THE U.S. CENSUS

HEARING
BEFORE THE
SUBCOMMITTEE ON THE CONSTITUTION
AND CIVIL JUSTICE
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
ONE HUNDRED FIFTEENTH CONGRESS
SECOND SESSION

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CONTENTS

JUNE 8, 2018

OPENING STATEMENTS

	Page
The Honorable Steve King, Iowa, Chairman, Subcommittee on the Constitution and Civil Justice	1
The Honorable Steve Cohen, Tennessee, Ranking Member, Subcommittee on the Constitution and Civil Justice	4
The Honorable Bob Goodlatte, Virginia, Chairman, Committee on the Judiciary	6
The Honorable Jerry Nadler, New York, Ranking Member, Committee on the Judiciary	6

WITNESSES

Steve Marshall, Attorney General, Alabama	
Oral Statement	9
J. Christian Adams, President and General Counsel, Public Interest Legal Foundation	
Oral Statement	11
Dr. Steve Murdock, Professor, Rice University	
Oral Statement	12
Steven Camarota, Director of Research, Center for Immigration Studies	
Oral Statement	14

QUESTIONS FOR THE RECORD

Dr. Steve Murdock, Professor, Rice University, Response to Questions for the Record. This material is available at the Committee and can be accessed on the committee repository at:

<https://docs.house.gov/meetings/JU/JU10/20180608/108398/HHRG-115-JU10-20180608-SD004.pdf>

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Letters Submitted by the Honorable Steve Cohen, Tennessee, Ranking Member, Subcommittee on the Constitution and Civil Justice. This material is available at the Committee and can be accessed on the committee repository at:

<https://docs.house.gov/meetings/JU/JU10/20180608/108398/HHRG-115-JU10-20180608-SD005.pdf>

Letters Submitted by the Honorable Steve King, Iowa, Chairman, Subcommittee on the Constitution and Civil Justice. This material is available at the Committee and can be accessed on the committee repository at: Justice

<https://docs.house.gov/meetings/JU/JU10/20180608/108398/HHRG-115-JU10-20180608-SD003.pdf>

Law Review Article Submitted by the Honorable Jamie Raskin, Maryland. This material is available at the Committee and can be accessed on the committee repository at:

<https://docs.house.gov/meetings/JU/JU10/20180608/108398/HHRG-115-JU10-20180608-SD002.pdf>

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QUESTIONS REGARDING THE U.S. CENSUS

FRIDAY, JUNE 8, 2018

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON THE CONSTITUTION AND CIVIL JUSTICE

COMMITTEE ON THE JUDICIARY

Washington, DC.

The subcommittee met, pursuant to call, at 9:07 a.m., in Room 2141, Rayburn House Office Building, Hon. Steve King [chairman of the subcommittee] presiding.

Present: Representatives King, Goodlatte, DeSantis, Gohmert, Handel, Cohen, Nadler, and Raskin.

Staff Present: Paul Taylor, Chief Counsel, Subcommittee on the Constitution and Civil Justice; Jake Glancy, Clerk, Subcommittee on the Constitution and Civil Justice; James Park, Minority Chief Counsel, Subcommittee on the Constitution and Civil Justice; Keenan Keller, Minority Senior Counsel; David Greengrass, Minority Senior Counsel; and Veronica Eligan, Minority Professional Staff Member.

Mr. KING. The Subcommittee on the Constitution and Civil Justice will come to order.

Without objection, the chair is authorized to declare a recess of the committee at any time.

We welcome everyone to today's hearing on the subject matter of "Questions Regarding the U.S. Census," and I now recognize myself for an opening statement.

Our hearing today will allow Members of Congress and the general public to examine the constitutional options the Federal Government has in determining how the decennial census is conducted and used, especially with regard to people who aren't in the country legally.

The current policy under which illegal aliens are counted in the census and included in the formula for geographically allocating Members of the U.S. House of Representatives allows areas with many illegal aliens to elect more Federal and State Representatives than areas with higher populations of citizens and lawful residents but few illegal aliens.

Since there are only 435 U.S. House Members, providing additional Representatives for areas in the country with many illegal aliens will leave other parts of the country inhabited by a relatively smaller number of illegal aliens with fewer Representatives.

Further, congressional districts with many illegal aliens will have fewer citizens casting votes for their Representatives, thereby granting citizen voters in districts with many illegal aliens more influence in selecting a Representative.

Also, legislators from areas that benefit from increased representation because of a disproportionate number of illegal aliens may be incentivized to support policies that encourage such aliens to come to and continue to stay in America, even when the policy preferences of illegal aliens may be very different from those of citizens and legal immigrants. Such legislators may also be incentivized to ignore immigration violations or refuse to cooperate with Federal immigration law enforcement.

The controlling language in section 2 of the 14th Amendment states that, quote, “Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed,” close quote.

The phrase “counting the whole number of persons in each State” makes clear the census envisioned by the 14th Amendment was intended to count former slaves as entire persons, as distinguished from the original Constitution, which provided that only three-fifths of the number of slaves would be counted for purposes of apportionment.

The phrase “excluding Indians not taxed” refers to the exclusion from census counting of Indians that could not be taxed by State or Federal governments because they were members of sovereign Indian nations.

Finally, the words “their respective numbers,” in the context of the census’ purpose of determining relative State population totals that will be the basis for apportioning Representatives for the subsequent decade, makes reasonably clear that the persons to be counted should have some meaningful connection to the State that has the significant potential to last through the decade to come—in other words, an expectation that they would be residents within that district, at least the potential that they would be residents there for the decade to come.

Consistent with this view, the Census Bureau has never attempted to count every person physically present in a State during the census and has excluded tourists and other short-term visitors and many other categories of people.

The Bureau’s own application for its “usual residence” standard has changed over the years, recognizing the determination of whether particular persons should be counted as part of a State’s respective number is not an automatic process but one that requires a reasonable judgment as to whether persons have a sufficient connection to a particular State such that their principal residence is in the State and has some minimum likelihood of a continuance there.

And regarding illegal aliens, there can be no legal residing if one is subject to deportation at any time in the near term.

The understanding of the Framers of the original census provision of 1789 was that apportionment would be based on the relative number of inhabitants in the States. The drafts of the apportionment provision, including the version initially approved by the

Constitutional Convention, used the term “inhabitants” rather than “persons.”

The committee on style, which is exactly what it sounds like, the committee on style or style of language, which was not authorized to make substantive changes to submitted provisions, replaced the phrase “citizens”—replaced the phrase with which they used, which was “citizens and inhabitants of every age, sex, and condition.” That phrase was replaced with a single word, “persons,” by the committee on style. And that was in the description of how the States’ numbers were counted. But the historical evidence does not indicate that this stylistic change was intended to alter the meaning of the census provision.

Indeed, in “The Federalist Papers,” James Madison, the highest authority, I might point out, who himself was a member of the committee on style, described the meaning of the terms of the Constitution as it would be ratified as followed, quote: “It is a fundamental principle of the proposed Constitution that the aggregate number of Representatives allotted to the several States is to be determined by a Federal rule founded on the aggregate number of inhabitants.”

In the same “Federalist Papers”—and that is close quote. In the same “Federalist Papers,” Madison wrote, quote, “Within every successive term of 10 years, a census of inhabitants is to be repeated,” close quote.

So he references strongly of “inhabitants” and the definition of “inhabitants” rather than the stylistic change to “persons.” And the original census statute enacted by Members of Congress, including members of the Constitutional Convention, refers to “inhabitants” as the subject of the census and the basis of apportionment.

The Constitution grants authority to Congress to exercise its discretion in determining who meets the habitation requirements for purposes of the census. Under the Constitution, Congress may direct, by law, the manner in which the census is conducted and enforce provisions of the 14th Amendment. Of course, in doing so, Congress may not usurp the Constitution.

Federal statutory authority also already provides that the Secretary of Commerce, under 13 U.S.C. 141(a), quote, “shall take a decennial census of population in such form and content as he may determine,” close quote. But, again, the Secretary of Commerce may not usurp the Constitution.

I would challenge Congress and the administration to consider whether the residence rule conforms to the original meaning of the Constitution. And I am encouraged that the Trump administration has made the decision to include a citizenship question on the 2020 census.

I hope we can continue working toward a 2020 census that accurately represents the American people. I look forward to hearing from all our witnesses today in examining with them how Congress and the Federal Government can use its constitutional authority to protect the sanctity of the votes of American citizens.

Finally, I would like to note that I have introduced two pieces of legislation to that end—namely, the Census Accuracy Act, which would allow the American people more information regarding unlawful presence in the United States, and the Libby Schaaf Act,

H.R. 5884, which would punish obstruction of law enforcement by State and local officials.

That concludes my opening statement, and I now recognize the ranking member, Mr. Cohen, for his opening statement.

Mr. COHEN. Thank you, Mr. Chair.

The Founders considered an accurate count of our Nation's population to be of such central importance to democratic government that they placed a requirement for census in Article I of the Constitution.

Specifically, Article I, section 2, as amended by the 14th Amendment, requires that, quote, "an actual enumeration," unquote, of the whole number of persons in each State be conducted every 10 years for the purpose of apportioning Representatives among the several States.

In addition to being used for apportionment, the census can aid our use for redistricting for State legislative districts, determine the distribution of Federal funds, and estimate population sizes between censuses. And, of course, it also results in the number of electors you have in the Electoral College and a way to elect a President that is in our constitutional system that does not consider the popular vote. State and local governments, businesses, and nonprofit organizations also use census data to inform their own decisions.

Yet the ability to meet the mandate of an actual enumeration of the whole number of persons in each State is under threat from this administration.

On the 26th of March, Secretary of Commerce Wilbur Ross issued a memorandum directing that a question asking about citizenship be added to the 2020 decennial census questionnaire. Such a question has not been on a decennial census in almost 70 years, and when it was, it was a time of great, great immigration in our country.

Adding such a question raises the serious risk of depressing the response rates of immigrants and other minority communities, leading to an undercount of their numbers.

All we have to do is look to Bean Station, Tennessee, near Morristown, where a raid was conducted and many, many immigrants were arrested for no reason whatsoever. The raid was under the auspices and the theory that it was going after the company for IRS violations. Nobody at the company was arrested or charged, but 100 or so people were taken and removed from their homes.

This has put immigrant populations under fear of even going to work. And that is part of what this administration is doing, and that is what would happen with this census—fear of being located and deported and separated from your family. Indeed, that is what we see. And the impact could be devastating for States and cities with large numbers of such communities, in terms of losing their fair share of congressional seats, Electoral College votes, and Federal funding. What we're talking about here is simply power, and power to try to go to States that don't have as many immigrants.

It is no wonder, therefore, that at least six lawsuits have been filed by States, cities, advocacy groups, and individual citizens to challenge the legality of this administration's decision to add a citizenship question.

According to the administration, a citizenship question is necessary to help enforce section 2 of the Voting Rights Act. That's hard to fathom, but that's what they say. This assertion seems like a thinly veiled pretext to exclude immigrants and racial minorities from being counted, literally and figuratively.

The real problem with voting rights enforcement is not the lack of a citizenship question on a census form; rather, that 5 years ago the Supreme Court in *Shelby County of Alabama v. Holder* eviscerated the most important enforcement mechanism of the Voting Rights Act when it struck the act's coverage formula and effectively gutted its preclearance requirement.

If the administration truly wanted to strengthen enforcement of the Voting Rights Act, it would push legislation to address the *Shelby County* decision and restore the Voting Rights Act to its full effectiveness. Yet they have not done that.

The same States that had to have preclearance, almost to a one, are in the South. They are also the States that most likely are to be seen restricting people's voting rights and making laws that say you have to present an ID, but not a college ID, or they move voting places, or they change all kinds of things to make it harder to vote. They appreciate minorities very much in those States—when they play football. But when they don't play football and they want to vote, they're not appreciated at all.

Instead, it chose to add a citizenship question that was not added through the usual years-long, exhaustive, and thorough vetting process, which could lead to an inaccurate count and the dire consequences that would flow from such an undercount.

Indeed, this is why six former Census Bureau Directors under both Republican and Democratic administrations, including Dr. Steve Murdock, who is our witness on the Democratic side today, have publicly opposed the addition of a citizenship question to the 2020 census.

It is also no answer to say that the census does not or should not include a count of undocumented immigrants. The plain meaning of the Constitution's text is clear: The census must count, quote, "the whole number of persons," unquote. Had the Constitution's drafters intended to limit the census count to citizens or exclude certain noncitizens, they could have done so, yet they did not. Mr. Madison may have said something in "The Federalist Papers," but it wasn't put in the Constitution.

Finally, we must remember that the decision to add a citizenship question to the census did not happen in a vacuum. Rather, it is part of a disturbing pattern of demonization and dehumanization of immigrants and other people of color in this country.

Throughout his Presidential campaign and after he assumed office, President Trump has repeatedly used hostile rhetoric toward nonwhite immigrant communities and imposed cruel, heartless, and unjustified policies like separating children from families at the border—which he claims is a Democrat bill that he is following, which is a lie, the big "L" word that comes from the President—and banning people from certain Muslim-majority countries. And if it wasn't a lie, he could just put in the bill, suggest the bill, and I'm sure his acolytes would pass it.

And in so doing, he has engaged in a nauseating flirtation with white nationalists and their belief that America is a country for whites only. Such bigotry should have no place in American life. Yet here we see only the latest example of this President's continuing dog whistle towards the darkest forces in our society.

We saw it in Charlottesville, and it sickened me—it sickened me—to say that there were fine people on both sides. There were not fine people on the sides of the Ku Klux Klan or the neo-Nazis. There never were, there never will be, and they're a threat to America as we know it and we believe it should be.

Adding an unvetted citizenship question to the census will not only undermine the Constitution's mandate of an actual enumeration of the whole number of persons but will only further exacerbate the already substantial mistrust between immigrant and minority communities and the government and only further serve to alienate and exclude already marginalized and abused communities. This is exactly the wrong thing to do and the wrong direction for America to go.

I yield back the balance of my time.

Mr. KING. The gentleman returns his time.

The chair will now recognize the chairman of the full committee, Mr. Goodlatte of Virginia.

Chairman GOODLATTE. Thank you, Mr. Chairman.

I'm pleased the subcommittee is examining today the role the U.S. Census can play in giving us a better picture of our Nation's composition.

In particular, getting better information regarding the citizen and noncitizen population of our country has significant implications for the fair and accurate enforcement of the Voting Rights Act, the distribution of Members of the House of Representatives in the apportionment process, and in providing for equal voting power among qualified voters.

I welcome the attorney general of Alabama here today and all of our other witnesses and look forward to their testimony.

Mr. KING. The chairman returns his time.

And the chair would now recognize the ranking member of the full committee, Mr. Nadler of New York, for his opening statement.

Mr. NADLER. Thank you, Mr. Chairman.

Mr. Chairman, for the first time since 1950, the census questionnaire in 2020, at the request of the Justice Department, will ask respondents whether or not they are U.S. citizens. As one of our witnesses, Dr. Steve Murdock, will explain, without thorough testing and analysis, the effects of adding a citizenship question are unknown and open to an array of dangerous consequences.

We know, for example, that this new policy is, in essence, as the ACLU warns, quote, "a door-to-door government inquiry as to the citizenship status of every member of every household in the United States," close quote. This, it argues, will dramatically reduce participation by immigrant communities, stunting their political influence and depriving them of economic benefits.

I share these concerns, as do several leading organizations committed to upholding civil rights and protecting the interests of immigrants, as well as various State and local government entities.

To date, at least six lawsuits have been filed against the Trump administration challenging the legality of adding this query to the 2020 census questionnaire, including one filed by my own State of New York, along with several other States and localities.

In addition, more than 100 of our colleagues in Congress have signed on to letters expressing their concern that an untested citizenship question may compromise preparations for the 2020 census and could jeopardize the accuracy of the count in all communities.

Further, six former Census Directors from both Democratic and Republican administrations oppose this change, including Dr. Murdock.

Yet, in service of a narrow political agenda, the Trump administration believes it knows better. Or perhaps it doesn't believe it knows better, but it wants to do it anyway. From its earliest days to the present, the administration has relentlessly pushed an anti-immigrant agenda. It has blatantly disregarded civil rights protections, as evidenced by its continuous efforts to roll back civil rights enforcement.

And any statements that this is intended to aid civil rights enforcement from an administration that has done everything possible to sabotage civil rights enforcement is the most obvious hypocrisy. Yet the Justice Department now seeks to use its supposed interest in protecting civil rights to justify this change to the census questionnaire.

I find the Department's purported justification for resisting this change—namely, that it is critical to its enforcement of section 2 of the Voting Rights Act and its important protections against racial discrimination in voting—to be not only disingenuous and hypocritical but offensive. Such justification appears to be no more than a thinly veiled smokescreen for the political motivations behind this costly and terrible decision.

The Constitution, as amended by the 14th Amendment, provides that "Representatives shall be apportioned among the several States which may be included within this Union, according to their respective numbers, counting the whole number of persons in each State," unquote.

And, contrary to the chairman, I don't think the change by the committee on style from "inhabitants" to "persons" changes anything at all. "Inhabitant" means everybody who inhabits, who lives there.

Clearly, this mandate is intended to ensure that all individuals are counted regardless of their citizenship status. Thus, changes to our Nation's census process that may have the effect, either intentionally or unintentionally, of diminishing the number of people counted, particularly when it targets one category of people, must not be taken lightly.

Allowing political considerations to taint census-related decisions that should be driven strictly by scientific considerations and quality standards does a disservice to an agency with a proud tradition of scientific excellence and independence.

Hopefully we can learn a lesson from history. At the time of the first census in 1790, some of our most influential constitutional Framers were directly involved in overseeing the effort, with Representative James Madison of Virginia reportedly recommending at

least five of the initial six questions and Secretary of State Thomas Jefferson supervising the overall effort.

Subsequently, there was controversy about the results, with both George Washington and Thomas Jefferson expressing skepticism over the final count because they expected a number exceeding the 3.9 million inhabitants found in the enumeration.

Like our Founders, I believe our primary constitutional duty is to ensure that no one is left out of the census. An accurate count is one of the most important civil rights issues to come before this subcommittee. Not only is it central to apportioning political power at every level of our representative form of government, but the data collected also influences the allocation of more than \$800 billion in Federal funds every year, along with countless policy and investment decisions by government agencies and private entities.

Mr. Chairman, the conduct of the decennial census was never supposed to be a political function. The Constitution mandates the count of every person in the United States in order to apportion seats in the House of Representatives among the States. Since 1790, every census has included citizens and noncitizens alike. Though the census has political consequences, the conduct of the census must be strictly nonpartisan and nonpolitical.

I do agree that robust oversight is necessary to protect the integrity of the census process and accuracy of the results. Accordingly, I thank the chairman for holding this hearing, and I look forward to hearing our witnesses today.

That concludes my prepared statement, but let me just add a couple of remarks.

I believe that this change in the census, the inclusion of this, is done in bad faith. It is not done with the real purpose of helping civil rights or anything else. Its intent is to frighten people in immigrant communities from participating in the census. Its intent is to prevent not only undocumented people but perfectly documented immigrants, families of immigrants, citizens, from participating. They want to short-count immigrant communities.

At least the chairman of the committee is truthful and forthright about his intent, but the administration is hypocritical about its intent. It is attempting to deliberately sabotage the census for raw, partisan, political purposes. It is attempting to discriminate against immigrant communities, citizens and noncitizens alike. Its conduct is disgusting, immoral, and hypocritical. And it must be overturned, even if that means that they do a bad census and we have to do another one 2 or 3 years later.

I yield back.

Mr. KING. The gentleman's time has expired.

And I thank the gentleman.

Without objection, other members' opening statements will be made part of the record.

And our first witness is Steve Marshall, the attorney general of Alabama. And the second witness is J. Christian Adams, the president and general counsel of the Public Interest Legal Foundation. Our third witness is Dr. Steve Murdock, a former Census Bureau Director and currently professor of sociology at Rice University. And our fourth and final witness is Dr. Steve Camarota, the director of research for the Center for Immigration Studies.

The light will switch from green to yellow, indicating that you have 1 minute to conclude your testimony. When the light turns red, it indicates the witness's 5 minutes have expired, and we hope you can summarize your testimony some time near that point.

Before I recognize the witnesses, it's a tradition of this subcommittee that they be sworn in. So please stand.

Do you swear that the testimony you are about to give before this committee is the truth, the whole truth, and nothing but the truth, so help you God?

Thank you. You may be seated.

Let the record reflect that all the witnesses responded in the affirmative.

And I now recognize General Marshall for your testimony.

Mr. General Marshall.

TESTIMONY OF STEVE MARSHALL, ATTORNEY GENERAL, ALABAMA; J. CHRISTIAN ADAMS, PRESIDENT AND GENERAL COUNSEL, PUBLIC INTEREST LEGAL FOUNDATION; STEVE MURDOCK, FORMER DIRECTOR, U.S. CENSUS BUREAU, PROFESSOR, RICE UNIVERSITY; AND STEVEN CAMAROTA, DIRECTOR OF RESEARCH, CENTER FOR IMMIGRATION STUDIES

TESTIMONY OF STEVE MARSHALL

Mr. MARSHALL. Chairman King, thank you. Ranking Member Cohen and distinguished members of this body, I'm honored to appear before you today and appreciate your invitation to discuss specifically the implementation of the proposed residence rule of the 2020 census.

Last month, the State of Alabama filed a lawsuit in Federal court challenging our expected loss of representation in Congress and in the Electoral College as a result of the Census Bureau's counting of illegal aliens for purposes of apportionment.

As stated in our complaint and as joined by Congressman Mo Brooks, who is here with us today, Alabama is set to lose one of its seven congressional seats and one of its nine electoral votes—a seat and a vote it would not lose if illegal aliens were excluded from the apportionment base.

Not only would this skewed result rob the State of Alabama and its legal residents of the rightful share of representation, but it plainly undermines the rule of law. If an individual's presence in our country is in violation of Federal law, the question is, why should the States in which they reside benefit from their illegal status?

On February 8, 2018, the U.S. Census Bureau promulgated the residence rule governing the implementation of the 2020 census. To be counted in the census, a person must meet the Census Bureau's "usual residence" definition—that is, anyone who has a U.S. residence where they live and sleep most of the time.

The rule explicitly requires that citizens of foreign countries be counted toward the population of their resident State, a population total used to calculate the number of Representatives and electoral votes each State receives, regardless of whether they are here legally.

If the rule is implemented, States with illegal alien populations risk losing representation in the U.S. House of Representatives and votes in the Electoral College to States with higher illegal alien populations.

According to an expert hired by our office, much like Alabama, Ohio is likely to lose a congressional seat and an electoral vote. Montana will not gain a congressional seat and electoral vote it would have otherwise gained. To the contrary, both Arizona and Texas will likely gain one congressional seat and one electoral vote. California is expected to keep one congressional seat and electoral vote that it would not have otherwise if illegal aliens had not been counted for the purposes of apportionment.

I should note that the 2020 would not be the first time that illegally present foreign nationals were counted in the decennial census. In previous censuses, the Census Bureau has failed to exclude illegal aliens from the population counts of each State. Thus, it is critical for action to be taken to resolve this issue.

In 2010, for example, Louisiana, Missouri, and Ohio each lost one seat in the House and one vote in the Electoral College. Montana failed to gain a seat and electoral vote it would have gained had illegal aliens been excluded from the apportionment base. By contrast, California gained two seats and an electoral vote that it would not have acquired if illegal aliens had been excluded from the apportionment base.

The reapportionment of House seats and electoral votes is a zero-sum proposition. One State's gain is another State's loss. Illegal immigration impacts the distribution of seats in the House of Representatives and the Electoral College because the United States illegal population is both large and highly concentrated. Thus, the practice of including illegal aliens in the census has repeatedly resulted in the unlawful distribution of additional House seats and electoral votes to States with high numbers of illegal aliens from States with low numbers of illegal aliens, robbing those States and their citizens of their rightful share of representation and political power.

Further, this creates a potential disincentive for States with large illegal alien populations to cooperate with Federal immigration authorities seeking to enforce the laws that Congress has enacted.

The irony, of course, is that illegal aliens cannot vote; therefore, they are not the ones who gain from being included in the apportionment base. In a State in which a large share of the population cannot vote, those who do vote count more than those who live in States where a larger share of the population is made up of U.S. citizens. In these States, Representatives and electors will represent a smaller number of constituents than their counterparts in States with lower numbers of illegal aliens.

Large illegal alien populations indisputably redistribute power from Americans living in States comprised mostly of U.S. citizens and permanent legal residents and give it to others who live in States with larger illegal alien populations compromising the right of equal representation.

We are not without recourse, and we have chosen to be proactive on this issue. The State of Alabama's lawsuit asked the court to de-

clare the residence rule unlawful. We assert that apportionment of the House of Representatives and the Electoral College based on census data that counts illegal aliens in the population figures is unconstitutional because it violates the principle of equal representation.

I see that my time is about to expire. I will yield for questions at a later time.

Thank you, Mr. Chairman.

Mr. KING. This chair thanks General Marshall for his testimony and now recognizes Mr. Christian Adams for his testimony.

TESTIMONY OF J. CHRISTIAN ADAMS

Mr. ADAMS. Thank you, Chairman King, Ranking Member Cohen, and members of the subcommittee.

My name is Christian Adams. I am president and general counsel of the Public Interest Legal Foundation and also served as an attorney in the Voting Section of the Department of Justice. I brought multiple enforcement actions under the Voting Rights Act and have since brought dozens of 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 the enforcement of civil rights laws. A census that collects robust citizenship data will also give policymakers the chance to curb the real everyday foreign influences in our election.

Having access to robust citizenship data will be extremely useful at the Justice Department. Without robust citizenship data, ambiguities and conjecture can impair enforcement of the Voting Rights Act. It should not be acceptable to overlook small jurisdictions for Voting Rights Act enforcement, but that is precisely what has happened over the years without robust and precise citizenship data.

Consider the case of Lake Park, Florida, a small town in Palm Beach County. 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*.

In the 2000 census, 48 percent of Lake Park residents were African American, but in 2009 not a single black candidate for town council had ever won a seat. A large noncitizen Haitian population, however, made it less clear what the precise African-American citizenship population was in Lake Park.

Remember, the Department may not bring a section 2 case 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.

Voting Rights Act enforcers without robust citizenship data will necessarily operate in a degree of statistical fog.

While it is true that the United States alleged that Lake Park contained a sufficiently large black citizenship population to justify the case, the extraordinarily large black population, more than 40 percent, made that an easier assertion to make. Nonetheless, it

was impossible to know the precise level of citizenship in Lake Park.

Now, some have attacked President Trump's decision to collect precise, robust citizenship data and question the justifications for that improvement made by Acting Assistant Attorney General John Gore. As I have shown in the Lake Park case, those critics are flat-wrong. Collecting robust citizenship data will aid enforcement of the Voting Rights Act.

If you simply look at the Voting Rights Act complaints filed in section 2 cases, which I detail in great length in my written testimony, you will see over and over again the Department relies on citizenship data. If you look at *United States v. Euclid School Board*, the complaint relies on citizenship estimates.

A particularly revealing case is *United States v. The School Board of Osceola County*, a case in Florida from about 14 years ago. In that case, the Department made an allegation in the complaint that a majority of citizen voting-age population in one illustrative district could be drawn for minorities. They made the specific allegation of citizen voting-age population. But the truth is that the Department did not enjoy access to that data because it did not exist. They had to use estimates as opposed to precise data.

I talk about a South Carolina case that I worked on, *United States v. Georgetown County School Board*, and other cases. You can read the complaints yourself—*United States v. City of Boston*, *United States v. Osceola County*, and on and on and on.

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 racial minority has sizable numbers of noncitizens distributed throughout the geographic area, would greatly aid Justice Department staff in correctly and precisely enforcing the Voting Rights Act.

Thank you, Mr. Chairman.

Mr. KING. Thank you, Mr. Adams.

The chair now recognizes Dr. Murdock for 5 minutes.

Dr. Murdock.

TESTIMONY OF STEVE MURDOCK

Mr. MURDOCK. Thank you for the opportunity to be here. I appreciate having been—

Mr. KING. Could you pull that microphone a little closer?

Mr. MURDOCK. Sorry. I appreciate having the opportunity to speak to you today.

Let me tell you a little bit about my background. I previously served as Director of the U.S. Census Bureau under George W. Bush and as State demographer of Texas, having been appointed to that position by Governor Rick Perry. I have, therefore, worked for both Republicans and Democrats, in terms of doing demographic analysis.

I have also served as a faculty member at Rice University and several other universities. And for more than 35 years, I have performed substantive analyses of how demographic and socioeconomic change impact the forms and types of development in rural and urban communities.

I understand that the proposals you are discussing today are the subject both of litigation and legislation, so let me state the obvious: I am neither a lawyer nor a legal scholar. Therefore, I cannot offer an informed opinion on the intent of the Founding Fathers or subsequent legislators with respect to the meaning of the U.S. Constitution's original census clause.

I can assure you, based on my and many other demographers' experience, the Census Bureau follows the guidance of the U.S. Department of Justice, as well as its own counsel, with respect to whom it should include in the Nation's constitutionally required decennial enumeration of the population. In other words, the Census Bureau follows the requirements set out by law, in terms of performing its duties.

The Justice Department reaffirmed the position of the Census Bureau in 1989 and was part of the oversight—and was dealt with by the oversight subcommittee during the administration of President George H.W. Bush.

I and many other scholars and officials using census data have concerns related to the implementation of the census and the factors you may want to weigh as you consider proposals that directly or indirectly require the Census Bureau to include questions on citizenship and immigration status on the decennial form.

The inclusion of such questions may adversely affect the accuracy of census data and, thus, their utility for apportioning seats in the U.S. House of Representatives among the 50 States and for developing the boundaries of House districts within States. Such questions should not be included in the census until they have been thoroughly tested, including field testing.

Beyond the fundamental uses for redistricting, as all of you know, census data help guide the prudent distribution of many billions of dollars in Federal and State assistance to local communities, guiding their expenditures for healthcare, education, rural hospitals, infrastructure, et cetera.

Civic and business leaders rely on accurate data from the census and other data sets for which the census provides baseline data to attract and retain vital businesses and the investments that they involve. In addition, businesses use census information to guide such decisions as where to locate plants and stores, et cetera.

In fact, when I served as State demographer, I received many requests for data that could be readily obtained, directly or indirectly, from the census to inform the work of State agencies as well as private-sector entities.

I recognize the delicate balance that must be achieved to ensure that all those residing in the United States are included in determining the demographic base for the proportion of House seats. Thus, despite the fact that data apparently have been successfully collected on citizen status for some purposes, I am concerned about how the inclusion of questions that directly solicit information on citizenship and immigration and legal status from every person residing in the Nation will affect the completeness of the census count for the primary constitutional purpose of the census: the distribution of House seats among the States. At the same time, State and local agencies and planners, et cetera, are using such data effectively.

Preparations for the census are complex. We know that they're involved in a number of dress rehearsals at the present time. But I think most people—and I was among those six Census Directors that signed the letter referred to earlier—believe that adding untested questions on citizenship and immigration status at this point in the decennial planning process would put the accuracy of the enumeration and success of the census in all communities at risk.

While the ongoing American Community Survey and earlier surveys have included a question on citizenship, data collection for all census areas have not included such a question since 1950, a very different time in terms of our Nation's history.

Mr. KING. Thank you, Dr. Murdock.

And now the chair would welcome back to the committee and recognize Dr. Camarota for his 5 minutes of testimony.

TESTIMONY OF STEVEN CAMAROTA

Mr. CAMAROTA. As the chairman said, my name is Steven Camarota. I am director of research at the Center for Immigration Studies. And I would like to thank the committee for allowing me to testify today.

Now, in my oral testimony, I would like to emphasize just three points: First, it has been the norm to ask a citizenship or related question in prior decennial censuses; second, there is value in doing so; and, third, at present, there is no evidence that reinstating this question on the census would reduce response rates.

Let me begin with just a little bit of history. From 1820 to 1950, except for 1840, the decennial census included at least one question on citizenship or place of birth. Immigrants, of course, can be identified, then, from the country of birth they report. From 1960 to 2000, a question on citizenship or place of birth was asked to a subset of the population, roughly 10 million to 17 million households, taking part in the census.

Other than 1840, the 2010 census was the first time since 1820 that neither data on citizenship nor country of birth was collected in the decennial census for at least some share of respondents. In short, there is nothing unusual about asking about citizenship or related questions in the census.

Second, there is value in doing this. The Census Bureau, in its memorandum outlining its reasons, pointed out that it would be very helpful in enforcing the Voting Rights Act. Now, I would like to add that, from the perspective of a researcher, it would be very helpful to have this information.

Some may think that because we already ask citizenship in other surveys administered by the Bureau that we don't need to do it in the census. But in my many years working as a contractor for the Census Bureau evaluating the citizenship data in the American Community Survey, it was always challenging to find ways to measure the actual accuracy of that question. Then, as now, there is no definitive government data on the number of citizens residing in the United States that we could ever compare the survey results to. A citizenship question on the census would certainly provide much useful information in that regard.

Now, my third point is that, while some may have expressed concern that adding the question back into the census may reduce re-

sponse rate, at present there is no evidence that this would happen. There's just a concern. The argument is that, while citizenship was asked in many past censuses and is asked in many ongoing Census Bureau surveys, the candidacy and election of Donald Trump may have changed things. In particular, the idea is that stepped-up enforcement has created what might be called a Trump effect. That's my word.

It is true that the Center for Survey Measurement, part of the Census Bureau, did conduct some interviews and focus groups with field representatives and respondents on this potential problem and found that there was heightened concern that the enforcement of immigration laws may be affecting people's willingness to take part in government surveys. However, the Census Bureau, when it put that data out, it said that the survey was very small and it was unrepresentative—their words. So it's hard to know what, exactly, to make of it.

But we can, actually, get some idea of whether collecting citizenship data has become uniquely problematic, particularly in the Trump era. I discuss this more in my written testimony, but we can look at this question by first looking at the refusal rates right now on the Census Bureau's American Community Survey. It asks about citizenship. And it is true that there has been an increase in the share of people refusing to take part in that survey since 2005. But that increase began well before President Trump threw his hat into the ring. Moreover, the rates have not gone up faster in high-immigration States. So if refusal had something to do with immigration status, we would expect that to be the case, but it isn't.

We can also look at the Census Bureau's Current Population Survey, which also asks about citizenship and is collected each month. There has been no noticeable shift in the number of people who identify as immigrants from June 2015, when Trump threw his hat into the ring, to January of this year.

We can even dive a little deeper into that survey and look at those joining the survey each month for the first time, this so-called incoming rotation group. There has been no noticeable increase in what is called allocation rates on the citizenship question through January of this year. In other words, people coming into the survey have not been refusing to say whether they're citizens or not at any higher rates. And we have data through the first part of this year.

In sum, neither the CPS or ACS indicate that collecting citizenship data has become more difficult in the era of Donald Trump.

In sum, asking a question on citizenship or place of birth has been the norm; doing so, second, has value; and, third, at present, there is no evidence that reinstating the question would actually impact response rates.

Thank you.

Mr. KING. That concludes the witnesses' testimony. And now the chair will recognize himself for his 5 minutes of questioning.

And I thank you all for your testimony here.

Dr. Camarota, I was just thinking about some of the testimony maybe 10 years ago or so on this same topic that you delivered. It seems to me that in that testimony—and I didn't check this for 10

years, so—but it seems me that your testimony was that if we counted citizens rather than persons the reapportionment would result in between 9 and 11 congressional seats shifting from States like Florida, Texas, California to States like Utah and Indiana at that time.

Do you recall that testimony, and does that fit your perspective today?

Mr. CAMAROTA. Yes. Remember, there are about 20 million non-citizens living in the United States. In the census, we would expect about 10 million illegal immigrants to show up and about 10 million persons here legally in various statuses, mostly green cards. So that 20 million looks like it would still redistribute somewhere between 9 and 11 million seats in the House of Representatives.

Mr. KING. Nine to 11 seats.

Mr. CAMAROTA. Seats, right, that would change hands.

Mr. KING. Okay. Thank you. I appreciate that, Dr. Camarota.

I would like to turn to Attorney General Steve Marshall. And what I didn't hear in this testimony from anybody on this panel is, what should it look like if this country were functioning properly and appropriately? What would be the configuration of our electoral laws in the country?

And if we're going to try to get to the ideal—I would always like to see what's the pattern that we'd like to reach here and get our country fixed so it's functioning correctly. What would that America look like within the context of this electoral law that we have?

Mr. MARSHALL. Mr. Chairman, I can say from my perspective—and this is somebody that's a prosecutor. You know, I'm not a policymaker. But I believe in the rule of law. And that means that we enforce our laws equally across the spectrum of immigration so that we don't create in this situation an incentive for sanctuary cities or for certain localities to not enforce our immigration laws and that we adhere to the Constitution and that we allow for that Constitution to be implemented and interpreted as our Framers intended.

And so the nature of our lawsuit, a little bit different than some of the testimony you've heard here, is specifically about those who will be counted for purpose of congressional apportionment. And the reason why we are advocating against the residency rule that exists right now is that, currently, that information that we need to believe that the residency rule should be done and adopted as intended, that information is not being collected. And although there were comments provided to the Census Bureau when the residence rule was adopted, those comments were never addressed specifically relating to what we have alleged here.

And so our opportunity, specifically, is to put in front of a Federal judge this claim to seek relief and then allow for that judge to be able to fashion a remedy that's consistent with the law as stated.

Mr. KING. You had stated that you're not a policy person, but I would still ask you a policy question, which is: If you were going to design a census series of questions—I mean, I understand you'd would want to, ask are you a citizen? Would you also advocate for asking for, if you're a legal immigrant, under what status is that legal position—say, a green card or a visa or whatever the case

may be? And then, from beyond that, the omissions on that status if you're not legal would be, then, an illegal.

Would you advocate for collecting all that data so we know who is here and why?

Mr. MARSHALL. The simple answer is yes. You know, for us in the claim that we have here and from a policy perspective, not only would we want to know your citizenship but also whether or not, if you're here illegally, have you overstayed your welcome, in essence, the status you were granted, or have you ever even been granted status in the first place. And by having that information, it would allow us to do an appropriate apportionment of those congressional Representatives and the Electoral College.

Mr. KING. And what I'm hearing in some of the statements made up here on this panel, discussion about semantics rather than policy. And I would advocate what you've described is the policy we need to get to, regardless of how the semantics are argued out here.

And I would point out a statement made by Ninth Circuit Judge John Noonan in 1985 when he said this: "If there were an invading army on American soil, one does not suppose the Bureau of Census would count the enemy troops," close quote.

Any comments on that, General?

Mr. MARSHALL. No, again, other than, as somebody who has spent a career enforcing the law, I believe that we have that responsibility across our country.

Mr. KING. And I'd turn to Dr. Camarota for his comment because I saw his facial expression.

Mr. CAMAROTA. Yes, that would seem to not—you know, I'm not a constitutional lawyer, but it does seem to violate the spirit of, sort of, the Constitution to count an invading Army. That's for sure. But, under the current rules, if they were residing and that was their usual place of residence, of occupation, I guess they would have to attempt to be counted.

Mr. KING. We would have to draw a distinction between an invading army and an unarmed invading group of illegal aliens.

My time has expired, but I want to give deference to Dr. Murdock, who waved his hand. I don't expect the ranking member will object.

Mr. MURDOCK. Okay. Yes, I think the thing here that's important to understand from the standpoint of the Census Bureau is the Census Bureau does very careful work. It tests things to ensure that they, in fact, are responded to in ways that are logical and which reflect their status—that means citizen status—in a variety of ways.

I think what upset many of us that signed that letter that you saw, the six of us, was that we really haven't had the time or haven't taken the time—I won't fight over that—to evaluate these questions the way we evaluate every question, not just these questions but other questions on other elements that are involved.

And so what the Census has been asking for or suggesting is that, if we want the same accuracy with those kind of questions that we have with others, we need to allow the testing and other procedures to be performed with the Census.

Mr. KING. Thank you, Dr. Murdock.

Mr. MURDOCK. These have come late in the process.

Mr. KING. Thank you.

The chair would now recognize the ranking member, Mr. Cohen of Tennessee.

Mr. COHEN. Thank you, sir.

Dr. Murdock, do you know what findings were made to support the conclusion that adding the citizenship status question would help enforce section 2 of the Voting Rights Act or other laws that protect the voting rights of racial minorities? Do you know whether research was conducted and whether the research and findings were released publicly?

Mr. MURDOCK. Well, the Census is looking into some of these issues right now. The issue, as people have indicated, has been there for some time, but the problem is not so much the item but introducing it into the process where we are.

Understand that we are, in census terms, very close to the next census, and we will therefore have a census form, some questions of which have been used and tested, et cetera, and, on the other hand, items that most of us who are former Census Directors would argue require additional research and analysis before they're implemented.

Mr. COHEN. Do you believe the fact that citizenship has been asked on the ACS suffices to test the question for inclusion on the decennial form?

Mr. MURDOCK. You know, the ACS is a very valuable data collection source for lots of reasons. It does not replace, you know, what you want to obtain in terms of information for issues, other kinds of issues.

This requires—and I think most of us as Census Bureau Directors would say this—this requires an assessment and a testing process. This should be treated like other elements on the census form. And as Census Directors, what we are arguing is that, if you do not do that, things will occur that will be difficult for you to ameliorate.

Mr. COHEN. Many in the civil rights and voting rights communities have been concerned since the Shelby v. Holder decision that section 2 of the Voting Rights Act needs to be restored, that the Voting Rights Act has lost much of its importance.

Can any of you tell me which organizations—and they would be the organizations, naturally, to speak up, civil rights or voting rights advocates—have requested pushing for citizenship status as a way to help enforce section 2 of the Voting Rights Act? Which groups have done that? Can anybody help me with that?

Mr. ADAMS. Mine has. My group has done that.

Mr. COHEN. And have you participated in bringing actions under the Civil Rights Act?

Mr. ADAMS. Yes.

Mr. COHEN. Which actions have you brought?

Mr. ADAMS. A number of them. Davis v. Guam. We've brought more than two dozen cases relying on census citizenship data. My testimony got into great detail on that point.

Mr. COHEN. Thank you.

General Marshall, has Alabama been a party to any section 2 cases where they have been the initiating party?

Mr. MARSHALL. Mr. Cohen, I'm not aware of that specifically, but I'll be glad to be able to provide a written reply if we determine that—

Mr. COHEN. Would having citizenship information on 100 percent of the population improve the enforcement of section 2 in Alabama?

Mr. MARSHALL. Again, I can't comment on that, but I'll be glad to provide written testimony.

Mr. COHEN. Thank you, sir.

Is Roger Bedford alive and well?

Mr. MARSHALL. He is alive and well, yes, sir. I will be glad to send him your regards.

Mr. COHEN. Please. We've known each other a long time. Thank you.

Dr. Murdock, are there any other things you'd like to comment on?

Mr. MURDOCK. Excuse me?

Mr. COHEN. Would you like to comment on any other—

Mr. MURDOCK. Only as a former Census Director, when you look at the processes that the Census has implemented, for this issue or many others, these are tried and true processes for the evaluation of information or questions that you want to use in the census and similar kinds of procedures.

So I think for most of us, all of us, in fact, signing that letter as Directors, our concern was not to change the pattern and suddenly start putting in issues that might be politically popular or unpopular but which have not been tested in the very strict, empirical kind of way that census data questions and issues are normally tested.

Mr. COHEN. Thank you.

And I yield back.

Mr. KING. The gentleman returns his time.

The chair would now recognize the chairman of the full committee, Mr. Goodlatte from Virginia, for his questions.

Chairman GOODLATTE. Thank you, Mr. Chairman.

Attorney General Marshall, what do you believe is Congress' role in rectifying the concern that you raise in the State's lawsuit?

Mr. MARSHALL. Mr. Chairman, I think you have a couple of functions.

Number one, you obviously exercise congressional oversight of the Census Bureau, and so you have the ability to inquire and engage in the discussion that we hear about today. Specifically for us in Alabama is this issue of the inclusion of information for purposes of congressional apportionment.

You obviously are that body that makes law. You have the ability to be directly involved in being able to change our statutes to make sure that we can rectify what we believe is an unconstitutional act by the Census Bureau in the adoption of this rule itself.

And then, beyond that, I think, to be very much engaged in the litigation that we're involved with, to be able to see that Congressman Brooks has taken a bold statement to be able to make sure that we're going to stand for the rule of law. And you have the ability to stand with that as well.

Chairman GOODLATTE. Your complaint alleges a number of legal theories as to why illegal aliens should not be counted for purposes

of apportionment. Which do you believe a court will find most compelling?

Mr. MARSHALL. Mr. Chairman, I'm a litigator, so I'm not going to concede anything. Having said that, I do think that the APA violations specifically are the most straightforward allegations, specifically that when the rule was proposed that there were comments made specifically relating to the allegations that we make in the complaint, and there was no response to those comments at all.

Chairman GOODLATTE. Would you give us a little more detail on the Administrative Procedures Act?

Mr. MARSHALL. Specifically two allegations, one of which is the adoption of the rule itself was arbitrary and capricious, and that relates to the failure to be able to comment on that rule itself, but we also believe the Census Bureau exceeded their statutory authority when they adopted the rule to begin with.

Chairman GOODLATTE. And how do you distinguish your suit from the case that the U.S. Supreme Court considered in *Evenwel v. Abbott*?

Mr. MARSHALL. Two very specific grounds. Number one is that that case involved an intrastate question. It was not challenging it in a broad basis but actually within the State itself. And what we have seen is the Supreme Court has given great deference to intrastate issues in this area, as opposed to those that affect a national basis like we have here. And we believe, for those two very specific reasons, that case is distinguishable from the action that we filed.

Chairman GOODLATTE. Thank you.

Mr. Adams, the attorney general's Alabama lawsuit against the Census Bureau argues that, by including illegal immigrants in its count of the population, the Census Bureau is depriving that State, along with other States with relatively low numbers of illegal immigrants, of representation in the U.S. House of Representatives and also votes in the Electoral College that determine who is elected President.

Can you elaborate more on the unfairness of that current situation with regard to these States?

Mr. ADAMS. Thank you, Chairman Goodlatte.

Americans should be electing American leadership. And it is undeniable that that situation that you described is occurring. I think both sides of the aisle would agree that some States are getting more electoral votes because aliens are being counted for apportionment.

Now, is that something that most Americans are happy with? I would venture to say that's something that they would disagree with strongly.

Chairman GOODLATTE. Mr. Camarota, how does the current system disincentivize States with large illegal alien populations from cooperating with Federal immigration authorities?

Alabama's lawsuit argues that including illegal immigrants in the census will likely cause it to unfairly lose part of its share of the almost \$700 billion distributed each year by the Federal Government in grants and other funds.

Can you describe why it is unfair to financially penalize States that have fewer illegal aliens?

Mr. CAMAROTA. Right. So the bottom line is that political influence, as well as funds, is distributed based on the results of a census. So if you have people who are not supposed to be in the country but are residing in a State, the State has every incentive for them to be counted. So it means more money for the State. It means more political influence in Congress. It means more political influence over who elects the President.

So the incentives are certainly all on one side for the State with the large illegal population; that's for sure.

Chairman GOODLATTE. Thank you, Mr. Chairman. I yield back.

Mr. KING. The chairman returns his time.

The chair would now recognize the gentleman from Maryland, Mr. Raskin, for 5 minutes.

Mr. RASKIN. Mr. Chairman, thank you very much.

Let's see. I thought I would start with you, Attorney General Marshall. Welcome, and thank you for your testimony.

As I understand it, your argument is that the Constitution forecloses the ability to ask about the presence of noncitizens in the country. Is that right?

Mr. MARSHALL. No. What our litigation specifically is about is the use of illegal aliens in the count for purposes of congressional apportionment.

What we believe is that those who are in this country either exceeding their lawful authority or who do not come into this country legally in the first place should not be counted specifically for purposes of congressional apportionment as it relates to not only the Members of this body but also for the Electoral College.

Mr. RASKIN. Okay. And so I guess I come back to a question the chairman asked. It seems like the Supreme Court ruled on this in *Evenwel v. Abbott*, where it said that the plaintiffs had no basis to challenge the decision to apportion Representatives based on total population rather than citizen voting age population.

And I don't quite know how the interstate/intrastate argument affects the fact that the Supreme Court has precluded your argument, but maybe—can you illuminate that?

Mr. MARSHALL. Again, I mean, we could be here for a while, probably, to be able to distinguish that. And I'll be glad to provide additional written testimony that shows specifically why we believe that that case is distinguishable where we are.

But I do think that the intrastate and interstate distinction is critical based on prior precedent in how the court has carefully scrutinized those issues.

Mr. RASKIN. Okay. Let me ask you this: Do you consider yourself an originalist in terms of constitutional interpretation?

Mr. MARSHALL. Yes.

Mr. RASKIN. Okay. Do you know that the original censuses, which were created basically by the same people who wrote the Constitution—Madison, Jefferson—did not include any question on aliens or citizenship?

Mr. MARSHALL. I think also—and, again, this is one where we can provide additional written testimony—that we're prepared to present as part of our litigation significant history of that particular clause of the Constitution as well as how it was interpreted going forward—

Mr. RASKIN. Okay.

Mr. MARSHALL [continuing]. And we believe that it only included those who were in this country lawfully.

Mr. RASKIN. Okay.

The 1790—I just got the information from the Library of Congress. The 1790 census had no question on citizenship, immigration, or birthplace. The 1800 census had no question on citizenship, immigration, or birthplace. And the 1810 census had no question on citizenship, immigration, or birthplace.

So forget the last 60 years of practice, which is consistent, that the original interpretation by the Founders of the country and the Framers of the Constitution was not to require that question. So that's just something you might think about in terms of fleshing out the argument.

But let me pose a different kind of question, which is, are you aware that for most of American history noncitizens could vote in most of the States?

Mr. MARSHALL. Most of the States, but also there's a distinction between Federal elections as well.

Mr. RASKIN. Yeah. But in Federal and State and local elections. In fact, the Republican Party was the great champion of noncitizen voting. In the run-up to the Civil War, the Republican Party took the position very strongly that noncitizens had the right to vote. The Supreme Court repeatedly authorized that, including in *Minor v. Happersett*.

And the Southern States, of course, opposed it; they were opposed to noncitizen voting. And the very first article of the Confederate constitution stated that you had to be a citizen in the Confederacy in order to vote there, but that view lost during the Civil War. And then after the Civil War, noncitizen voting spread across the country.

The practice was called declarant alien suffrage, that if you declared that you were planning to become a citizen, they would give you the right to vote in most places.

But, generally, the view was, from the beginning of the country, if you were white, you were male, you owned property, your citizenship was completely irrelevant to whether or not you had a right to vote.

So it just seems to me that you're trying to put a gloss on the Constitution that was never there. Now, that might be good, it might be bad. You know, we could rewrite it. But don't you think the proper road to go for those who want to put a citizenship question and want to impose the citizenship requirement for voting, which has never been there, is to amend the Constitution? Don't you think we need to do that?

Mr. MARSHALL. No. I think that—and our litigation will establish clearly that that was the intent. And we believe that the Federal judge will rule in our favor to be able to include that information.

Mr. RASKIN. Thank you.

Mr. MURDOCK, let me ask you, what's the usual process for adding new questions to the census? Because a lot of us aren't familiar with that. How does it work?

Mr. MURDOCK. Well, generally, what happens is there is a need that is recognized by governmental and other entities to provide in-

formation on a particular item. The census gets a very large number of suggestions of things that they should analyze, and——

Mr. RASKIN. Is there an administrative process with notice and comment——

Mr. MURDOCK. Yes.

Mr. RASKIN [continuing]. And hearings and so on?

Mr. MURDOCK. Yes. They have a committee that—well, in terms of the census, they have committees that they create——

Mr. RASKIN. Okay. Has that taken place here or has that process been short-circuited, with respect to this citizenship question?

Mr. MURDOCK. I'm not sure about that particular question right now, but it has historically been one that has been examined very thoroughly.

Mr. RASKIN. Well, what's different about this process is I guess what I'm asking. Because you were saying that there's a major process problem.

Mr. MURDOCK. Well, I don't believe there's a process problem. There may be a timing problem, in terms of how long we've been with a great emphasis on one particular view here. Census tries not to be someone who is Democratic or Republican. It sees itself as being an objective purveyor of information and obtainer of information.

That requires that, when you have an issue that someone brings up—and there are thousands of issues that people would like put on census forms—the Census has committees then that analyze this, reduce it to a small number of items that they think fit within their mandate of what they're supposed to do. And then they determine whether or not they want to, and in many cases do, do their own tests of whether they can accurately and adequately obtain information on that particular item.

So the Census is very careful about adding items. They don't just, you know, decide, well, wouldn't it be fun to know X, Y, or Z. They have a very careful process. And it is a neutral process——

Mr. RASKIN. Thank you.

Mr. MURDOCK [continuing]. In terms of——

Mr. RASKIN. Thank you for your indulgence, Mr. Chairman.

Mr. KING. The gentleman returns his time.

And the chair would now recognize the gentlelady from Georgia, Mrs. Handel.

Mrs. HANDEL. Thank you, Mr. Chairman.

And thank you to our distinguished panel today.

One comment, just to clarify things for anybody who might be interested in reading the testimony from today and the comments: Irrespective of what was taking place in terms of voter eligibility in the 1700s and the 1800s, let's be perfectly clear that, today, under current law, it is patently illegal for a noncitizen to vote in a Federal election, period, full stop.

To Dr. Camarota, when was the first time that the citizenship question was asked in a census?

Mr. CAMAROTA. 1820.

Mrs. HANDEL. Thank you. When was the last time it was asked in a census?

Mr. CAMAROTA. About 17 million people received it in 2000.

Mrs. HANDEL. All right.

Mr. CAMAROTA. 17 million households. More people, but 17 million households.

Mrs. HANDEL. Would it be fair to say that asking about citizenship or place of birth, including country of birth, has been a fairly common practice in previous censuses?

Mr. CAMAROTA. Either on the regular census or a very large subset of the population. It's been the norm, yes.

Mrs. HANDEL. Okay. Great. Thank you so much.

And, Attorney General Marshall, thank you so much for being here. Are noncitizens eligible to vote in Federal elections?

Mr. MARSHALL. No.

Mrs. HANDEL. So it's illegal for a noncitizen to vote.

Mr. MARSHALL. That's my understanding.

Mrs. HANDEL. All right. So, if noncitizens are ineligible to vote in a Federal election, why would a noncitizen be included in the formula for congressional apportionment?

Mr. MARSHALL. That's my question to you. And that's specifically the question that we'll present to the Federal judge, is not only does it dilute the authority of certain States and their voters to be able to have an influence, it obviously overstates the authority of other States that allow people to be in this country and ignore the immigration laws.

Mrs. HANDEL. So would it be your opinion that if noncitizens are ineligible by law to vote in a Federal election and then are included in the reapportionment formula, that that would indeed dilute not only the voting power of minorities but, indeed, the voting power of all eligible voters?

Mr. MARSHALL. Yes. And, in fact, that will be a part of our litigation.

Mrs. HANDEL. Super. Thank you so much.

And, with that, I'd like to yield my time to my distinguished colleague, Representative Brooks, if the chair is okay with that.

Mr. KING. The chair would note that we haven't allowed that policy in the past, our tradition on this committee, but I understand your—I'd love to have Mr. Brooks speak, but we would be breaking a long-established policy.

Mrs. HANDEL. All right. Thank you.

Mr. BROOKS. Bummer.

Mrs. HANDEL. Then, with that, I will yield back.

Mr. KING. The record will show the quote from Mr. Brooks regardless: "Bummer."

So this concludes today's hearing.

And I want to thank the witnesses for your testimony, your responses to the questions, and the written testimony that you submitted.

I want to thank the members of this committee for engaging in this. And I want to thank the people who came in and listened to this hearing today.

And, hopefully, this moves us forward in a more constitutional direction than we have in the past and—

Mr. RASKIN. Mr. Chair.

Mr. KING. The chair would yield.

Mr. RASKIN. Can I just submit something for the record, a Law Review article?

Mr. KING. Hearing no objection—could you speak to what that is, though?

Mr. RASKIN. Yes. It is a Law Review article, written in 1993 in the University of Pennsylvania Law Review, called “Legal Aliens, Local Citizens: The Historical, Constitutional, and Theoretical Meanings of Alien Suffrage.” And I wrote it.

Mr. KING. Well, this would be an interesting thing for me to read.

There’s no objection heard by this chair. If so ordered, it shall be entered into the record.

Mr. RASKIN. Thank you very much.

[The information follows:]

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Mr. KING. Without objection, all members have 5 legislative days to submit additional written questions for the witnesses or additional materials for the record.

This hearing is now adjourned. Thank you.

[Whereupon, at 10:16 a.m., the subcommittee was adjourned.]

