



Department of Justice

STATEMENT OF

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U.S. DEPARTMENT OF JUSTICE**

BEFORE THE

**COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES**

FOR A HEARING ENTITLED

PROGRESS REPORT ON THE 2020 CENSUS

PRESENTED

MAY 18, 2018

Statement of John M. Gore
Acting Assistant Attorney General for the Civil Rights Division
U.S. Department of Justice
Before the Committee on Oversight and Government Reform
U.S. House of Representatives
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Chairman Gowdy, Ranking Member Cummings, and Members of the Committee, thank you for your invitation to appear this afternoon. The Department of Justice takes seriously this Committee's oversight responsibility, and, on behalf of the Department, I appreciate your invitation to participate in the Committee's oversight role.

The Department of Justice is resolutely committed to the robust and evenhanded enforcement of the Nation's civil rights laws and to free and fair elections for all Americans. The Department's mission is to ensure that all Americans have a full and equal right to vote regardless of race, color, language, or military service, and we are actively fulfilling that mission all across the country. In February of this year, the Department filed and resolved a voting rights case involving the State of Arizona. Since January 2017, the Department has participated as a party in three cases under Section 2 of the Voting Rights Act. The Department also has successfully resolved three cases under the National Voter Registration Act, and each of those resolutions guarantees that Americans across the country will have a full and fair opportunity to register to vote and to remain registered. The Department has filed three amicus curiae briefs in voting rights cases, including another Section 2 case and a case seeking equal access at the polling place for members of a language minority group in one of America's largest cities.

The Department also has continued our election monitoring program and our outreach and enforcement work under Section 203 of the Voting Rights Act, which protects the rights of members of language minority groups to participate in elections. The Department is also protecting the rights of military and overseas voters under the Uniformed and Overseas Citizen Absentee Voting Act (UOCAVA). The Department has assisted several states in achieving UOCAVA compliance in special elections in 2017 and 2018.

The Department is gearing up for the 2018 elections. We are actively working with states and localities to ensure that members of language minority groups and our brave men and women in uniform have a full and equal opportunity to cast their ballots this year. We also are working to ensure that all of this year's elections are conducted in accordance with federal-law requirements.

In furtherance of the Department's commitment to fair and evenhanded enforcement of the Nation's voting rights laws, on December 12, 2017, the Department sent a letter to the Census Bureau, "formally request[ing] that the Census Bureau reinstate on the 2020 Census questionnaire a question regarding citizenship, formerly included in the so-called 'long form' census." The Department's letter explained that citizenship data is "critical to the Department's enforcement of Section 2 of the Voting Rights Act and its important protections against racial discrimination in voting. To fully enforce those requirements, the Department needs a reliable calculation of the citizen voting-age population in localities where voting rights violations are alleged or suspected."

The Department's letter established why "the decennial census questionnaire is the most appropriate vehicle for collecting that data, and reinstating a question on citizenship will best enable the Department to protect all American citizens' voting rights under Section 2." To begin with, "[t]he Supreme Court has held that Section 2 of the Voting Rights Act prohibits 'vote dilution' by state and local jurisdictions engaged in redistricting[.]" Vote dilution can occur "when a racial group is improperly deprived of a single-member district in which it could form a majority." As many federal courts of appeals have held, "where citizenship rates are at issue in a vote-dilution case, citizen voting-age population is the proper metric for determining whether a racial group could constitute a majority in a single-member district[.]" Thus, "[t]hese cases make clear that, in order to assess and enforce compliance with Section 2's protection against discrimination in voting, the Department needs to be able to obtain citizen voting-age population data for census blocks, block groups, counties, towns, and other locations where potential Section 2 violations are alleged or suspected."

Beyond these legal bases, the Department's letter emphasized the Census Bureau's past practice. "From 1970 to 2000, the Census Bureau included a citizenship question on the so-called 'long form' questionnaire that it sent to approximately one in every six households during each decennial census." For many years, "the Department used the data collected in response to that question in assessing compliance with Section 2 and in litigation to enforce Section 2's protections against racial discrimination in voting." For the first time in the 2010 Census, however, "no census questionnaire included a question regarding citizenship," and the American Community Survey (ACS) estimates now provide "the Census Bureau's only citizen voting-age population data." But the ACS "does not yield the ideal data" for several reasons, including the difficulties of "relying on two different data sets"—ACS data and Census data—in litigation and the fact that ACS estimates "do not align in time with the decennial census data."

For all of these reasons, the Department's letter concluded that "decennial census questionnaire data regarding citizenship, if available, would be more appropriate for use in redistricting and in Section 2 litigation than the ACS citizenship estimates." The Department's letter thus formally requested that "the Census Bureau reinstate into the 2020 Census a question regarding citizenship."

Since the Department submitted its letter, four lawsuits have been filed against the Department of Commerce challenging its decision to reinstate a question regarding citizenship to the 2020 Census questionnaire. The Justice Department is defending these lawsuits. In deference to the courts charged with hearing and resolving pending litigation involving the United States, it is longstanding Department policy not to discuss that litigation outside of court, and the Department accordingly is limited in its testimony today.

As I said at the outset, the Department takes seriously the Committee's oversight responsibility. Our goal is to be as responsive to the Committee as possible. But in light of the ongoing litigation, the potential effect of public statements on pending court cases, and the Department's litigation constraints, including the need for the Department to speak as one voice through court proceedings and filings, I will be unable to make any statements today beyond those in the Department's letter or other publicly available information. The Department appreciates the Committee's understanding of these constraints. Thank you.