

To: Comstock, Earl (Federal); [PII]; Davidson, Peter (Federal); [PII]
Cc: Teramoto, Wendy (Federal); [PII]
From: Uthmeier, James (Federal)
Sent: Fri 9/8/2017 10:07:05 PM
Importance: Normal
Subject: Re: Census Matter Follow-Up
Received: Fri 9/8/2017 10:07:07 PM
[nihms-497406.pdf](#)
[ATT00001.htm](#)

Earl-

Here is an update on our efforts:

Peter and I reached out to Ted Kassinger and Mark Neuman to discuss the issues that we reviewed with the Secretary on Wednesday and get their thoughts on how best to go forward. Mark was on vacation and asked to discuss further next week. Ultimately, everyone is in agreement with our approach to move slowly, carefully, and deliberately so as to not expose us to litigation risk. We can discuss further in person. At this point, Peter and I want to make sure that we are not yet discussing our analysis with outside parties that may take our discussions public.

Following up on the Secretary's request from Wednesday, there are several states that have been involved in litigation for using citizenship data for redistricting: Texas, California, Florida, Illinois, and North Carolina have all used CVAP data (citizen voting age population) analyses for redistricting. Many other states are most certain to have also used the data, but those are the ones that are immediately apparent after an initial review. Indeed, court holdings seem to indicate that states MUST use such data if it is expected that the state has a number of minority persons covered by Section 2 of the Voting Rights Act sufficient to form a district. *See Pender County v. Bartlett*, 361 N.C. 491, 649 S.E.2d 364 (2007) (in review of a Sec. 2 VRA claim the court concluded that a CVAP majority was required); *see also LULAC v. Perry*, 548 U.S. 399 (2006) (recognizing that Texas' claim that Latinos made up the majority of a district lacked merit because "the parties agree that the relevant numbers must include citizenship . . . because only eligible voters affect a group's opportunity to elect candidates."). Accordingly, states need to use Census citizenship data in order to satisfy redistricting requirements.

As for the sufficiency of ACS data on citizenship, there are several authorities that have questioned its reliability. I am again providing one such study.

Peter and I plan to continue discussing this on Monday and will look forward to reviewing with you and the Secretary. I will also continue to research the Apportionment Act requirements throughout the weekend. If other thoughts or needs come up over the weekend, please do not hesitate to call me on my cell.

Have a nice weekend,

James

From: Comstock, Earl (Federal)
Sent: Thursday, September 07, 2017 6:13 PM
To: Davidson, Peter (Federal); [PII]; Uthmeier, James (Federal); [PII]
Cc: Teramoto, Wendy (Federal); [PII]
Subject: Re: Census Matter Follow-Up

I suggest setting up a call for tomorrow. The Secretary is asking for progress on this. Earl

From:"Davidson, Peter (Federal)" <[REDACTED]>
Date:Thursday, September 7, 2017 at 5:30 PM
To:"Uthmeier, James (Federal)" <[REDACTED]>, "Comstock, Earl (Federal)" <[REDACTED]>
Cc:Wendy Teramoto <[REDACTED]>
Subject:RE: Census Matter Follow-Up

I don't believe it was the AG of Kansas, but instead the Sec of State that he was referring to. He is the state official that is heading up the anti-fraud working group. I am concerned about contacting him because he will immediately go public with the fact that we have contacted him, and the Sec will be bombarded from the right and the left. What I would like to do is set up a meeting with some trusted outside advisors to bring some more perspective to this decision, before we do anything externally. I would suggest the trusted advisors be people like Ted Kassinger, Mark Neumann, Ken Duberstein...people like this, who have experience with Census and/or good political judgment. We could set up such a meeting for next week. So, let's just call a timeout on any external contacts on this topic until we are ready for word to get out publicly that we are looking into this.

From:Uthmeier, James (Federal)
Sent: Thursday, September 07, 2017 4:58 PM
To: Comstock, Earl (Federal) <[REDACTED]>
Cc: Davidson, Peter (Federal) <[REDACTED]>
Subject: Re: Census Matter Follow-Up

Hi Earl-

We followed up with the Kansas AGs office about setting up a call and they said that he is out on travel. I asked his executive assistant to please see if we could schedule the call as soon as possible.

I'm looking into states that have evidently used citizenship data for redistricting/VRA enforcement and can provide that information today.

I'll also spend more time looking at the Apportionment Act and what it has actually required.

James

On Sep 7, 2017, at 4:53 PM, Comstock, Earl (Federal) <[REDACTED]> wrote:

Hi Peter and James –

As I discussed with James a little while ago, the Secretary would like an update on progress since the discussion yesterday regarding the citizenship question.

If we could get a short email or memo today that would be great.

Thanks. Earl