

CONGRESSIONAL TESTIMONY OF TREY MAYFIELD

**BEFORE THE SUBCOMMITTEE ON THE CONSTITUTION & LIMITED
GOVERNMENT OF THE COMMITTEE ON THE JUDICIARY**

**“ENUMERATION OR ESTIMATION:
WHY INACCURATE CENSUS RESULTS HURT AMERICAN CITIZENS”**

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Thank you Chairman Roy, Ranking Member Scanlon, and Members of the Committee for inviting me here today to discuss issues related to the 2020 Census.

My name is Trey Mayfield, and I served as Counsel to the Director of the Census Bureau at the end of the first Trump Administration, during which time many legal issues concerning the methodology, accuracy, and use of 2020 Census data were raised.

Our Constitution is largely concerned with structuring our form of Government, and placing textual limits on power. The decennial Census is one of the very few specific exercises of power mandated by the Constitution.

The Census Clause is firmly lodged in Article I of the Constitution. It is, for constitutional purposes, a congressional responsibility.

In order to apportion Members of the House of Representatives among the several States so that the House membership proportionately reflects each State’s population, Article I, Section 2, Clause 3, mandates that there be an “actual Enumeration” every ten years.

Section 2 of the Fourteenth Amendment reaffirms that requirement.

When interpreting the Constitution, we must look to its text, using the commonly understood meaning of its words at the time it was ratified in 1789. The Constitution requires “The actual Enumeration.” Not surprisingly, dictionaries from that time demonstrate that an “enumeration” requires an actual counting, and not just an estimation of numbers. The Founders were well aware of the opportunities for fraud to inflate—or deflate—a given State’s population in order to alter representation in the House. For that reason, the federal government was charged with conducting the Census, and doing so by actually counting—not estimating—how many people were living in the United States.

Since 1790, Congress has consistently reaffirmed in Census-authorizing legislation that statistical adjustments are prohibited in determining our national population for apportionment purposes. To be sure, Census data is used for many purposes other than apportionment, including disbursing federal funds to states and localities, obtaining demographic data, and ascertaining the

state of the nation in such ways as the Congress and President deem appropriate. Some kinds of statistical adjustments are permissible in performing those functions. But not for enumeration.

Congress has mandated that the Census “be as accurate as possible” and banned the use of statistical adjustment for enumeration because it “poses the risk of an inaccurate, invalid, and unconstitutional census.” Within these limitations, Congress has delegated responsibility for implementing the Census to the Secretary of Commerce and the Census Bureau.

Congress also requires the President report to Congress the total population of the Nation, each State, and the number of representatives to which each State is entitled. There is no law, however, prohibiting the President from reporting additional information to the Congress in that report, such as the number of illegal aliens included in that count, and what the results would be in their absence.

Congress has also prohibited the release of any Census data whereby the person who provided the data can be identified.

Purportedly to meet this requirement, civil servants at the Bureau applied a methodology to the 2020 Census called “differential privacy” that violates the Constitution’s actual enumeration requirement, and the congressional prohibitions on the use of such methods. They refused to allow their method to be peer reviewed, or to disclose the data upon which they concluded that differential privacy was needed instead of the method the Bureau had used previously, known as “data swapping.”

Using differential privacy altered both the count and the characteristics of individuals and households reported at the region, district, town and census block level. In essence, the Bureau’s reported population data moved people around within states.

For instance, when testing differential privacy using the data from the previous Census in 2010, the population of Port Royal, Virginia was artificially increased by 87%, while the population of Stony Creek, Virginia was decreased by 43%. In other words, differential privacy results in people from larger subgroups and geographic units being moved to smaller ones.

Opposition to differential privacy was unanimous among Census stakeholders. Every letter the Bureau received from outside data scientists and statisticians came to the same conclusion. Differential privacy is illegal, it is data corrupting, and it addresses a non-existent problem.

It was also opposed unanimously by governmental actors and interest groups, for reasons as straightforward that using fake population data makes it difficult for governments to carry core responsibilities, such as drawing district lines, and determining where to locate bus stops and schools. Studies since the 2020 Census data have confirmed that this is exactly what differential policy does—it adds fake people where they do not live, and subtracts real people from where they do live. Thus, all of the reported enumeration Census data from 2020 below the state level is false.

I welcome the Committee's questions.