

AMERICAN COMMUNITY SURVEY CITIZENSHIP DATA FOR VRA LITIGATION

PRESENTED BY THOMAS M. BRYAN



5-29-2025 ACS Data Users Conference

WHO AM I

- Thomas Bryan, President of BryanGeoDemo (BGD)
 - A collaboration of nationally recognized demographic and analytic experts.
- Past employee of the US Census Bureau's Population Estimates and Projections (PEP) Branch, worked on the development of the ACS.
- Recent member of 2030 Census Advisory Committee
- Author "Redistricting, A Manual"
- 30 years of applied demography experience
- The majority of BGD work today is in redistricting, but also leverages ACS data regularly in projects ranging from custom population estimates and projections, municipal infrastructure projects, public health studies on opioids and tobacco, fair housing research and more.

Peter A. Morrison · Thomas M. Bryan

Redistricting: A Manual for Analysts, Practitioners, and Citizens

 Springer



ACS DATA USES AT BGD

- The American Community Survey is foundational for our daily work on VRA cases.
- Our most important ACS data are Citizen Voting Age Population (CVAP) AKA B05003 A-I
- These data are the foundation for the first (of three) Gingles preconditions of Voting Rights Act (VRA), which states that Plaintiffs must be able to demonstrate that “the racial or language minority group is ‘sufficiently large and geographically compact to constitute a majority in a single-member district’”
- These data, provided in the form of an annual special tabulation, come with a unique set of challenges.
- Bottom line: without the ACS, we would not have the data we need to uphold the VRA.

Guidance under Section 2 of the Voting Rights Act, 52 U.S.C. 10301, for redistricting and methods of electing government bodies

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Section 2 prohibits both voting practices that result in *citizens* being denied equal access to the political process on account of race, color, or membership in a language minority group, and voting practices adopted or maintained for the purpose of discriminating on those bases.

GINGLES PRECONDITIONS

- In VRA cases, courts use the “Gingles test” to assess claims.
- Under the Gingles test, plaintiffs must show the existence of three preconditions:
 - 1) The racial or language minority group "sufficiently large and geographically compact to constitute a majority[50% + 1] in a single-member district";
 - 2) The minority group is "politically cohesive" (meaning its members tend to vote similarly); and
 - 3) The "majority votes sufficiently as a bloc to enable it ... usually to defeat the minority's preferred candidate."
- CVAP data are critical to the Gingles test, because they measure *potential* voting strength among those who are of voting-age population (VAP).

REDISTRICTING AND THE VRA

- Since the release of the 2020 Census data, each state has been apportioned their seats in Congress and drawn their redistricting plans. The drawing of districts, from Congressional to state Senate and Legislative to lower levels of geography, uses the Decennial Census population reported in the PL94-171 file.
- VRA claims can (and do) come out of the redistricting cycle for newly drawn districts, but can also come at any time for existing jurisdictions with:
 - 1) districting plans used in single-member district election systems or multi-member district election systems;
 - 2) mixed election systems, e.g., any combination of single-member, multi-member, and at-large seats, and any associated districting plans; and
 - 3) at-large election systems.

POST-2020 REDISTRICTING VRA LITIGATION

- 25 cases asserting federal racial gerrymandering claims (8 challenging congressional maps, 11 legislative maps, and 6 both);
- 17 cases asserting intentional race discrimination claims under the U.S. Constitution (7 challenging congressional maps, 3 legislative maps, and 7 both);
- 30 cases asserting claims under Section 2 of the Voting Rights Act (10 challenging congressional maps, 11 legislative maps, and 9 both), and
- 7 cases asserting race-based claims under state constitutions (3 challenging congressional maps, 3 challenging legislative maps, and 1 challenging both congressional and legislative maps).

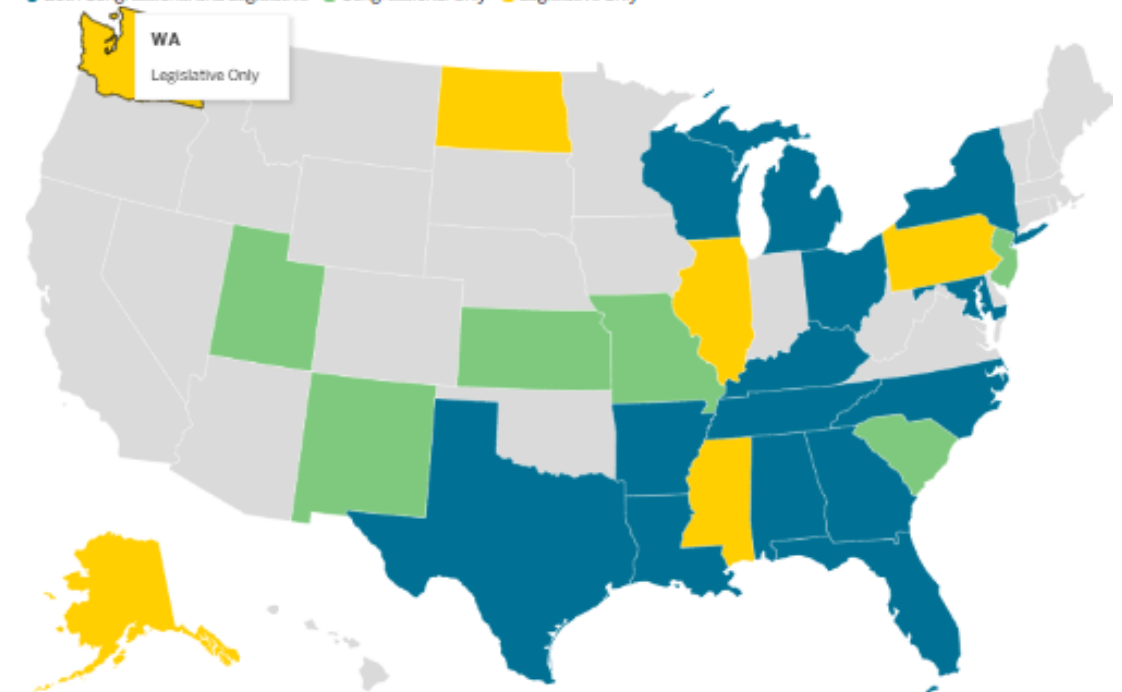
Where Maps Have Been Challenged

As of May 12, 2025, congressional and/or legislative maps around the country have been challenged in a total of 88 cases. Of these cases, 52 challenged congressional maps and 52 raised challenges to legislative maps.

All told, maps in 28 states have been challenged.

Legal Challenges to Maps Adopted After 2020 Census

● Both Congressional and Legislative ● Congressional Only ● Legislative Only



Note: As of 5/13/2025
Source: Brennan Center analysis

Source: Brennan Center

CITIZENSHIP

- Section 2 prohibits both voting practices that result in *citizens* being denied equal access to the political process. Citizenship data are required to adjudicate VRA cases.
- A citizenship question is asked in the ACS, but not in the decennial census.
 - Notably, citizenship *was* asked in the decennial census from 1890-1950.
- The 2020 US Census did not include a question about citizenship status after the Supreme Court blocked the Trump administration's attempt to add one, citing concerns about the rationale provided for the change.
- During this time, the Census Bureau and others provided research and analysis indicating a significant impact on the 2020 Census response rates from adding a citizenship question.
- The citizenship question is still actively in play in the current administration and could arguably have the most significant impact of any question on the execution of the 2030 Census.

ACS AND VOTING RIGHTS ACT CASES

- The ACS produces three work products:
 - 1) Standard reports
 - 2) Microdata (PUMS); and
 - 3) Special tabulations
- Since the data that are necessary for Section 2 cases (CVAP data for specific race and ethnic combinations at low levels of geography) are *not available* as a standard report or in the microdata, the DOJ requests a special tabulation of CVAP data annually.
- ACS data are aggregated and reported annually as 5-year estimates by Census Block Group.

Citizen Voting Age Population (CVAP) by Race and Ethnicity - A Special Tabulation from the ACS 5-Year Estimates

A Citizen Voting Age by Race and Ethnicity (CVAP) special tabulation was originally created from the Census 2000 long form. This original CVAP special tabulation was produced at the request of a group of data users and was published in 2002 for use in voting rights analysis.

At the request of the Department of Justice, the U.S. Census Bureau began publishing an annual CVAP special tabulation from the most current American Community Survey (ACS) 5-year estimates starting with the 2005-2009 5-year estimates. This CVAP tabulation was released in February of 2011.

The 2002 special tabulation and the subsequent ACS versions are all published down to the block-group level of geography.

NOTE: The CVAP special tabulation data is organized in the tabs below by the **last year of the ACS 5-year span or the year of the Decennial Census**, depending on whether ACS or Decennial data were used to produce the dataset. Please be aware this is not the same as the year of the data's publication (e.g., the 2018 Tab below is for the 2014-2018 ACS 5-Year CVAP special tabulation which was published in February of 2020).

ACS CITIZEN VOTING AGE POPULATION (CVAP) ESTIMATES

- The annual ACS CVAP special tabulation for the DOJ is the result of an enormous effort by the redistricting group of the U.S. Census Bureau.
- The file that is published only represents the beginning of the work for demographers working in redistricting. Important considerations demographers face are:
 1. The definitions of the minority populations are inconsistent with DOJ requirements.
 2. The file is highly volatile from one vintage to the next.
 3. The file can be significantly inconsistent with the PL94-171 VAP data (technically, you can't have more CVAP than VAP)
 4. The file is intended to be used to aggregate many BGs into a large district, yet many VRA remedial plans are dependent on just one single BG minority estimate.
 5. The file needs to be disaggregated down to individual blocks.

Let's look briefly at a few of these...

ACS RACE AND ETHNICITY DEFINITIONS FOR THE DOJ

- These are the groupings requested and reported by the DOJ:
 - Race alone.
 - Minority + white is only provided for AIAN, Asian and Black / AA.
 - Black / AA is provided with AIAN.
 - Two+ races is provided in total.
 - Hispanic is provided alone and not by race.

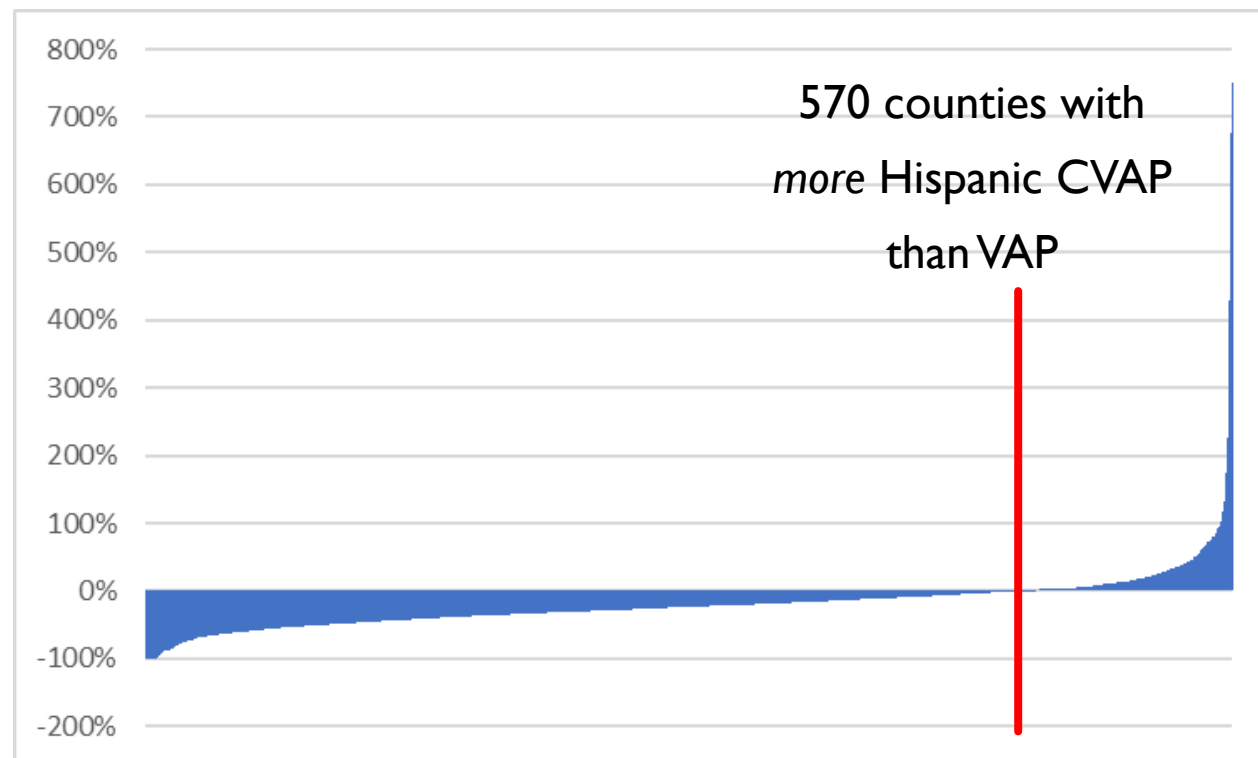
1	Total CVAP
2	Not Hispanic or Latino (NH)
3	American Indian or Alaska Native Alone (NH)
4	Asian Alone (NH)
5	Black or African American Alone (NH)
6	Native Hawaiian or Other Pacific Islander Alone (NH)
7	White Alone (NH)
8	American Indian or Alaska Native and White (NH)
9	Asian and White (NH)
10	Black or African American and White (NH)
11	American Indian or Alaska Native and Black or African American (NH)
12	Remainder of Two or More Race Responses (NH)
13	Hispanic or Latino

The DOJ guidance requires an estimate of any part minority population (not just race alone).
The minority CVAP estimates provided do not align with the guidance DOJ requires.

ACS CVAP AND DECENNIAL VAP: COUNTY COMPARISON: HISP

- Among the 3,221 counties (inc. PR), 570 have *more* Hispanic CVAP than VAP.
- This is extraordinary, since the vast majority of non-citizens are Hispanics

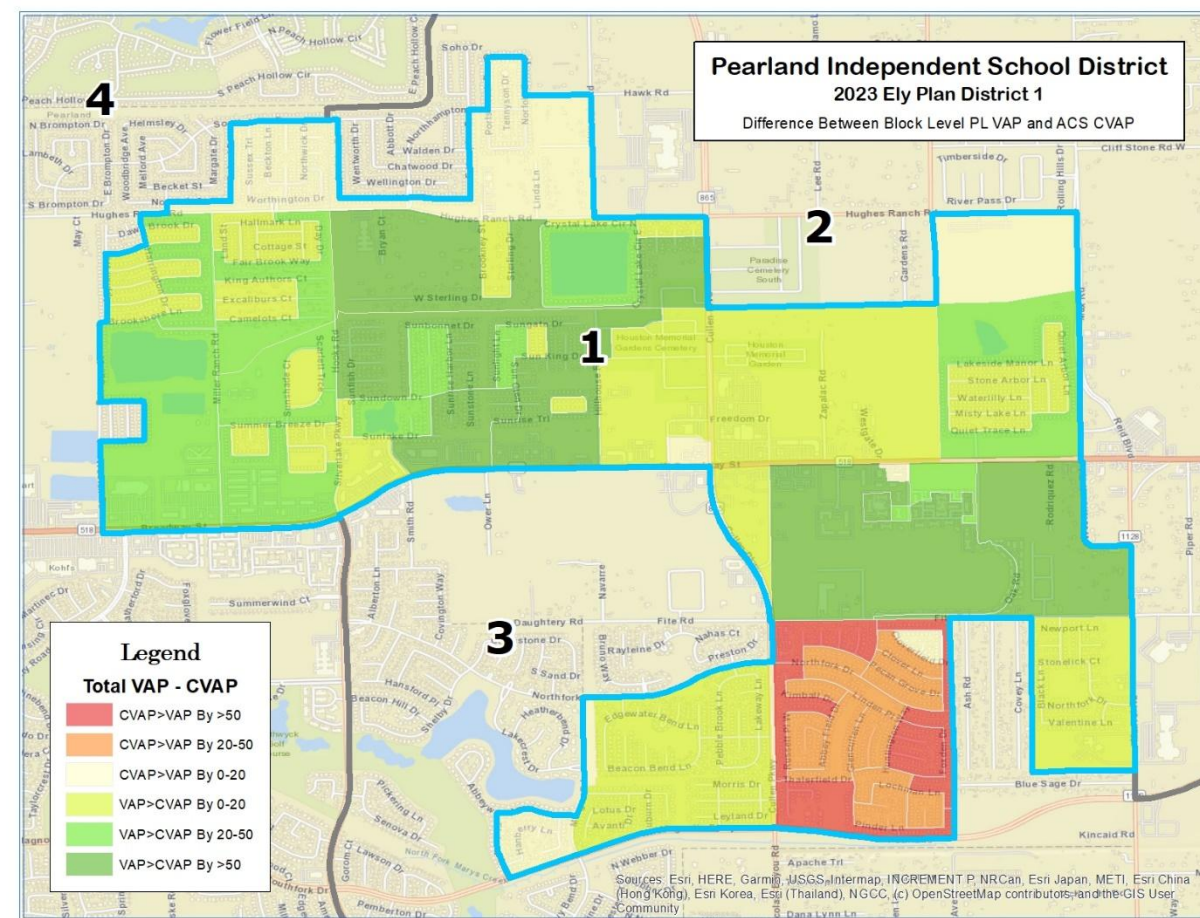
% Hisp Difference Between VAP and CVAP by US County



CVAP AND VAP INCONSISTENCIES

- In a recent school district case in Texas, the entire case was built on a single block group whose Black population estimate was significantly inconsistent with the 2020 Census.
- This inconsistency could be because of either ACS error or 2020 Census error, but the outcome was the same: this district was sued because of a single block group estimate.

BGID20	Total	White NH	APB, NH	APA, NH	Other	Hispanic
CVAP	2,655	1,110	1,305	85	0	155
VAP	1,898	833	460	221	22	362



BLOCK GROUP DISAGGREGATION

- Last, the data in the DOJ special tabulation are published for block groups. Since districts almost always need to be drawn with census blocks to generate majority-minority populations greater than 50% and comply with traditional redistricting criteria – demographers need to disaggregate these data on their own.

- How one disaggregates the BG data alone can determine whether an entire district is majority or not.
- Example of recent case with block outcomes using IPF vs. a simple one-way rake:

Iterative Proportional Fitting

Block	BGD Total	CVAP D
482012322012020	233	27.1%
482012322012022	180	21.0%
482012322012038	69	8.1%
482012322012039	22	2.5%
482012322012040	64	7.5%
482012322012041	202	23.5%
482012322012042	15	1.7%
482012322012053	50	5.9%
482012322012054	23	2.7%
Total	858 I	

One-Way Rake

Block	Total	CVAP K
482012322012020	277	37.5%
482012322012022	111	15.0%
482012322012038	53	7.2%
482012322012039	20	2.8%
482012322012040	52	7.1%
482012322012041	154	20.9%
482012322012042	11	1.5%
482012322012053	45	6.2%
482012322012054	14	1.9%
Total	738 P	

AMERICAN COMMUNITY SURVEY CITIZENSHIP DATA FOR VRA LITIGATION CONCLUSION

- Citizenship data are foundational to the adjudication of VRA cases.
- The collection of citizenship data by the decennial census is very much in play and is going to have a significant impact on the development and execution of the 2030 Census.
- The development of the ACS CVAP special tabulation is a monumental undertaking.
- After the release of the special tabulation, a demographers work really begins assessing the results, seeking to resolve inconsistencies and carefully disaggregating BG data down to individual blocks to develop and adjudicate VRA claims.

THANK YOU

- Diana Elliott, Lillian Kilduff, Mark Mather, and others for putting this session together.
- James Whitehorne - Chief, Redistricting and Voting Rights Data Office, and his team at the U.S. Census Bureau.
- My colleagues on the 2030 Census Advisory Committee, who served faithfully and tirelessly during our time together under the leadership of Arturo Vargas and Nancy Bates.
- You, the audience, for your use and support of the ACS.

Thomas M. Bryan

tom@bryangeodemo.com

425-466-9749