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CENSUS 2000 FIGHT CONTINUES

(Click here for brief)

On Tuesday, January 8, 2002, a petition for writ of certiorari was filed in the United States Supreme Court on behalf of Edgar Morales and four other residents of Texas seeking review of the constitutionality of Census 2000. At issue is whether Congress has the power to require, under penalty of law, that the American people answer questions on race, employment, housing and other subjects invading their privacy and totally unrelated to the two express constitutional purposes for the decennial census — apportionment of representatives in the U.S. House of Representatives, and the imposition of direct taxes.

By the express text of the first sentence of Section 2 of the Fourteenth Amendment, amending Article I, Section 2, Clause 3, racial identity no longer has any place in legislative apportionment. And by the express text of the unamended original grant of decennial census power, Congress has no right to seek information concerning employment and housing conditions, especially when the Census Bureau promotes the census as a vehicle to be used for allocating funds from state to state at the risk of distorting the population distribution among the states, and thereby, endangering the constitutionally-prescribed purpose of legislative apportionment.

Such a promiscuous use of its census power violates Article I, Section 1 of the Constitution, which specifically states that Congress has only those powers “granted herein.” By perverting the power to conduct a decennial census from its original purpose — the apportionment of members of the House and the imposition of direct taxes — Congress has disregarded the written Constitution’s carefully crafted limit upon the enumerated census power. And the lower courts, to date, have let Congress get away with it.

The petition filed on Tuesday, January 8, urges the United States Supreme Court to intercede to defend the Constitution against this aggrandizement of power. It relies primarily upon the constitutional principles underlying the Court’s 1999 census decision (Department of Commerce v. U.S. House of Representatives, 525 U.S. 316 (1999)), requiring an actual count of the people, not a statistical estimate, and two recent cases where the Court ruled that Congress could not transform its power to regulate interstate commerce to outlaw guns in schools and punish perpetrators of gender-motivated crimes. United States v. Lopez, 514 U.S. 549 (1995), and United States v. Morrison, 529 U.S. 598 (2000). If Congress cannot mutate its Commerce power into a general police power for a purpose not permitted under the Constitution, then Congress should not be permitted to convert its census power into a general power to require the American people to answer any question that the Census Bureau chooses to ask every 10 years.

Representing petitioners before the United States Supreme Court are Herbert W. Titus of the Virginia Beach, Virginia law firm of Troy A. Titus, P.C., William J. Olson and John S. Miles of the McLean, Virginia firm of William J. Olson, P.C., and J. Mark Brewer of the Houston, Texas firm of Brewer & Pritchard.