



**STEVE CHABOT
MEMBER OF CONGRESS
FIRST DISTRICT, OHIO**

NEWS

129 Cannon House Office Building
Washington D.C. 20515
(202) 225-2216

441 Vine Street, Room 3003
Cincinnati, Ohio 45202
(513) 684-2723

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Chabot Says African-American Farmers' Constitutional Rights Not Safeguarded

Washington, D.C. – Congressman Steve Chabot (R-OH), Chairman of the House Subcommittee on the Constitution stated at a hearing today that the constitutional rights of African-American farmers were not being safeguarded under the *Pigford v. Glickman Settlement*. Chabot, chairing the second hearing on this issue, also stated that there needs to be a remedy to ensure the farmers receive the compensation they are entitled to under the settlement.

It has been reported that as many as 66,000 African-American farmers submitted late claims because of improper notification, barring them from the settlement and depriving them of their due process rights. In Ohio, 420 claims were made by African-American farmers after the deadline. Of those, 410 were rejected on procedural grounds without consideration of their merit.

Chabot's statement follows:

**Statement of the Honorable Steve Chabot
Chairman, House Judiciary Committee Constitution Subcommittee
Oversight Hearing on the Notice Provision in the *Pigford v. Glickman*
November 18, 2004**

Thank you all for being here for this very important hearing. This is the second in a series of hearings the Constitution Subcommittee is holding on the 1999 settlement reached between the U.S. Department of Agriculture and a class of Black farmers who have experienced discrimination by the USDA.

From the time this Subcommittee began examining this issue, we have had more

reasons than not to believe that the government has failed to do the right thing. I strongly believe, however, that with all of the information we are gathering in our oversight investigation, including through these hearings, we will have the understanding from which to develop a full and just solution.

I would like to thank our witnesses for coming. Your insights, expertise, and institutional knowledge are critical to this Subcommittee in its efforts to find justice.

During the last hearing, my colleagues and I used our oversight authority to gain a better understanding generally of the Consent Decree.

However, as we continue to examine more closely certain aspects of the settlement and its administration, it has become increasingly apparent that certain Due Process protections, fundamental to the Constitution, are lacking in this case.

Due Process of the law is the legal concept that the Framers of our Constitution created to ensure that the government respects all - not some, or even most - of an individual's right to life, liberty, and property.

The Due Process Clause places limits on the government's ability to deprive citizens of these rights – guaranteeing fundamental fairness to all individuals. One of the most important safeguards that has evolved from this Clause is the right to notice -- notice of a judicial proceeding in which an individual's right to life, liberty and property may be affected or eliminated altogether. The form of notice must be reasonably designed to ensure that those individuals will, in fact, be notified of the proceedings.

This fundamental right to notice applies to the 1999 Pigford Consent Decree and all those who had a viable claim of discrimination, which impacted their lives, liberty and property, against the Department of Agriculture.

Tragically, recent statistics released on the Consent Decree suggest to this Subcommittee that this Constitutional right was not safeguarded in the construction and administration of the Consent Decree.

Although the notice campaign design was deemed to be effective by the court in a fairness hearing held on April 14, 1999, the determination was made using advertising industry tools designed to measure the *likely* effectiveness of a campaign, not the *actual* effectiveness of a campaign.

Reports indicate that approximately 66,000 potential class members submitted their claim late - most because they did not know that they were required to submit a claim sooner - losing their right to sue the USDA for past wrongs.

It is hard for many of us to accept that 66,000 farmers would consciously wait to file a claim that would impact their right to life, liberty, and property -- knowing that they were required to do so earlier.

Further investigation into the circumstances surrounding the late claims reveals that many farmers failed to get any notice whatsoever – or failed to understand the contents of the notice, if they did. These facts lead this Subcommittee to conclude that the notice implemented in the *Pigford* case was either ineffective or defective - as nearly two-thirds of the putative class failed to be effectively notified of the case requirements.

The hearing this morning will focus on the actual effectiveness of the notice campaign.

As we learn more about this aspect of the Consent Decree, we will consider the appropriate remedy to protect the safeguards afforded by the Constitution and uphold Lincoln's vision that every Black American who wants to farm was the tools available to do so.

I would like to close by putting a personal face on what Lincoln's vision means to people who have been impacted by the USDA's actions. This promise is still valued today, as this quote explains: "I have worked all my life being a servant to God and his people in Chilton County, Alabama. . . . My forefathers were brought here to farm and the gift of loving the land has passed down for more than 10 decades. I am proud of the heritage in spite of the adversity." This is the sentiment of Bernice Atchison, one of the witnesses at today's hearing. It is for Bernice and all of those who still have faith in the promises of this country that we are here today working toward finding a solution.

Again, thanks to all of the witnesses for taking the time to tell their story today.

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