



August 7, 2018
Ms. Jennifer Jessup
Departmental Paperwork Clearance Officer
Department of Commerce
Room 6616
14th and Constitution Avenue, NW
Washington, DC 20230

RE: Comments on Proposed Information Collection on 2020 Census, Docket No. USBC-2018-0005

Dear Ms. Jessup,

On behalf of Campaign Legal Center (CLC), we write to offer comments on the 2020 Census proposed information collection. We urge the Department of Commerce (the Department) to remove the proposed citizenship question from the 2020 Census form, a last-minute addition that Census Bureau officials concluded will be “very costly” and “harm[] the quality of the census count.”¹

Adding a citizenship question to the 2020 Census will hinder its ability to provide an accurate snapshot of our nation’s population and sharply limit its functionality as a tool to assess local demographics. Most importantly, it will perpetuate distortions in our representative democracy and impose disproportionate representational harms on minority communities. The Department should reverse course and rescind this unnecessary and harmful question in order to pursue the 2020 Census’s core purpose: “to count *everyone* once, only once, and in the right place.”²

¹ Memorandum from John M. Abowd, Chief Scientist & Assoc. Dir. for Research & Methodology, U.S. Census Bureau, on Technical Review of the Department of Justice Request to Add Citizenship Question to the 2020 Census (Jan. 19, 2018), <https://apps.npr.org/documents/document.html?id=4500011-1-18-Cv-02921-Administrative-Record#document/p1289/a428453>.

² Proposed Information Collection; Comment Request; 2020 Census, 83 Fed. Reg. 26,643, 26,644 (June 8, 2018) (emphasis added).

CLC is a nonpartisan, nonprofit legal organization committed to improving our representative democracy and protecting the fundamental right of all Americans to participate in the political process. Through its redistricting and voting rights programs, CLC participates in state and federal litigation to ensure that all communities, and particularly minority communities, are afforded equal access to our democratic system.

Central to CLC’s mission is the protection of the right of all Americans to equal representation. The Supreme Court has long recognized this central premise of our democracy through its one-person, one-vote doctrine, which mandates that electoral districts have roughly equal population. The current proposal by the Department—to inquire about the citizenship status of every person in the country regardless of the predicted adverse consequences for an accurate count—flies in the face of the basic democratic principles embedded in our Constitution.

1. The Constitution and the Census Act mandate that total population be used for constitutional apportionment.

The Constitution mandates that the “whole number of persons in each State,”³ be enumerated “every . . . ten years, in such Manner as [Congress] shall by Law direct.”⁴ Currently, the only statutorily required data point the Census Bureau must obtain is a “tabulation of total population by States,”⁵ which is necessary to fulfill the constitutional mandate to apportion based on the “whole number of persons.”⁶

2. Experts, including Census Bureau officials, agree that asking citizenship status will harm the accuracy of the Census and aggravate undercounts of hard-to-count populations.

The Department should heed the warning of the Census Bureau’s chief scientist, who concluded in an internal memorandum that adding this question will be “very costly,” will “harm[] the quality of the census count,”

³ U.S. Const. amend. XIV.

⁴ *Id.* art. I, § 2, cl. 3. As historical documents show, this was from the start understood to be a “Census of the Inhabitants,” without regard to citizenship. *See, e.g.,* Letter from Timothy Pickering, Postmaster Gen., to Thomas Jefferson, Sec’y of State (Dec. 26, 1793), <http://founders.archives.gov/documents/Jefferson/01-27-02-0557> (referring to the “Census of the Inhabitants”).

⁵ 13 U.S.C. § 141(b).

⁶ U.S. Const. amend. XIV, § 2; *see also Dep’t of Commerce v. U.S. House of Representatives*, 525 U.S. 316, 341 (1999) (holding that the Census Act requires actual enumeration data, not sample-based counts, to be used for apportionment purposes).

and will result in “substantially less accurate citizenship status data than are available from administrative sources.”⁷

A mandatory inquiry into citizenship status is all but certain to engender concern among non-citizens—both documented and undocumented—and households comprising a combination of citizens and non-citizens. Even before the addition of the citizenship question, Census Bureau staff raised concerns that the current political climate has markedly increased fear and non-responsiveness among immigrant communities during the testing for the 2020 Census.⁸

Six former Census Bureau directors, who served under both Democratic and Republican administrations, have explained the dangers of adding this question and doing so without adequate testing.⁹ As former Census Director Kenneth Prewitt testified in 2005:

The nuanced reasons for the question . . . will of course be lost to millions upon millions of Americans. The question will be treated with suspicion. . . . [I]t is foolish to expect that census-taking is immune from anxieties that surround such issues as undocumented aliens, immigration enforcement, terrorism prevention, national identity cards, total information awareness, and a sharp increase in surveillance generally.¹⁰

In addition to both citizens and non-citizens simply not responding, “[n]on-citizens, mistrustful of the government’s promise that their answers to a census question can never be used against them, will misrepresent

⁷ Memorandum from John M. Abowd, *supra* note 1.

⁸ Mikelyn Meyers, U.S. Dep’t of Commerce, *Respondent Confidentiality Concerns and Possible Effects on Response Rates and Data Quality for the 2020 Census* (2017), <https://www2.census.gov/cac/nac/meetings/2017-11/Meyers-NAC-Confidentiality-Presentation.pdf>.

⁹ Letter from Vincent P. Barabba *et al.*, to Wilbur Ross, Sec’y of Commerce (Jan. 26, 2018), [https://www.washingtonpost.com/r/2010-2019/WashingtonPost/2018/03/27/Editorial-](https://www.washingtonpost.com/r/2010-2019/WashingtonPost/2018/03/27/Editorial-Opinion/Graphics/DOJ_census_ques_request_Former_Directors_ltr_to_Ross.pdf)

[Opinion/Graphics/DOJ_census_ques_request_Former_Directors_ltr_to_Ross.pdf](https://www.washingtonpost.com/r/2010-2019/WashingtonPost/2018/03/27/Editorial-Opinion/Graphics/DOJ_census_ques_request_Former_Directors_ltr_to_Ross.pdf) (“In summary, we believe that adding a citizenship question to the 2020 Census will considerably increase the risks to the 2020 enumeration. Because we share your goal of a ‘full, fair, and accurate census,’ as the Constitution requires, we urge you to consider a prudent course of action in response to the Justice Department’s untimely and potentially disruptive request.”).

¹⁰ *Counting the Vote: Should Only U.S. Citizens Be Included in Apportioning Our Elected Representatives?: Hearing Before Subcomm. on Federalism & the Census of the H. Comm. on Gov’t Reform*, 109th Cong. 77-78 (2005) (statement of Kenneth Prewitt).

themselves on the census form.”¹¹ As several Census directors concluded in an *amicus curiae* brief to the Supreme Court in 2014: “The sum effect would be bad Census data. And any effort to correct for the data would be futile.”¹² The Census Bureau cannot become a quasi-investigatory agency and still perform its basic responsibilities as a statistical agency.

Given that a one-by-one citizenship inquiry would invariably and significantly lower and skew response rate to the Census in general, such an inquiry would seriously frustrate the Census Bureau’s ability to conduct the only count the Constitution expressly requires: determining the whole number of persons in each state in order to apportion House seats among the states.¹³

3. Adding a citizenship question will make it impossible for states to comply with the one-person, one-vote principle because it will make census data irreparably inaccurate.

Since 1962, the Supreme Court has required compliance with the “one-person, one-vote” principle. Compliance with this principle is core to our democracy because “[t]he right to vote freely for the candidate of one's choice is of the essence of a democratic society [a]nd the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.”¹⁴

Jurisdictions rely on the Census to ensure that everybody is equally represented in local, state, and federal elections. Therefore, adding a question to the 2020 Census that threatens its accuracy—and threatens to disproportionately undercount minority communities—“strike[s] at the heart of representative government.”¹⁵

The threat to representation for all Americans—and particularly for minority communities—is especially alarming given the lack of rationale for this addition to the 2020 Census. The Secretary of Commerce’s initial rationale was a letter from the Department of Justice suggesting that the citizenship data was necessary to enforce the Voting Rights Act. However, civil rights

¹¹ *Id.*

¹² Brief of Former Directors of the U.S. Census Bureau as *Amici Curiae* in Support of Appellees at 25, *Evenwel v. Abbott*, 136 S. Ct. 1120 (2016) (No. 14-940), 2015 WL 5675832, at *25.

¹³ See U.S. Const. art. I, § 2, cl. 3; *id.* amend XIV, § 2.

¹⁴ *Reynolds v. Sims*, 377 U.S. 533, 555 (1964).

¹⁵ *Id.* at 78.

organizations that enforce the Voting Rights Act have uniformly rejected that assertion as not only unsupported, but false.¹⁶

In fact, recent disclosures show the impetus for the addition of the question: the Department of Commerce asked the Department of Justice for the letter; it was not the other way around.¹⁷ In a recent ruling, a federal court held that evidence “suggest that Secretary Ross's sole proffered rationale for the decision, that the citizenship question is necessary for litigation of Voting Rights Act claims, may have been pretextual.”¹⁸ The accuracy of the Census is too important to be manipulated by hidden and unexplained motives.

CLC supports the right of every American to equal representation, regardless of his or her partisan affiliation, race, ethnicity, or socio-economic status, and therefore, opposes any change that endangers the accuracy of the total Census count, which is fundamental to maintaining our representative government. CLC urges the Department to reverse course and return to its decades long practice of not prying into residents’ immigration status during the decennial Census.

Respectfully submitted,

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¹⁶ Letter from Leadership Conference on Civil and Human Rights *et al.*, to Wilbur Ross, Sec’y of Commerce (Jan. 10, 2018), <https://civilrights.org/protect-census-oppose-doj-request-add-citizenship-question-2020-census/>.

¹⁷ Hansi Lo Wang, *I Will Call the AG: Trump Officials Pushed for Census Citizenship Question*, NPR (July 30, 2018), <https://www.npr.org/2018/07/30/632847876/i-will-call-the-ag-trump-officials-pushed-for-census-citizenship-question>.

¹⁸ *State v. U.S. Dep’t of Commerce*, ___ F. Supp. 3d ___, 2018 WL 3581350 (S.D.N.Y. July 26, 2018).