



Census Citizenship Question: What You Need to Know

By Pawel Styrna | July 2019

The Issue

On March 26, 2018, U.S. Secretary of Commerce Wilbur Ross announced that the 2020 decennial census questionnaire would reinstate a question about citizenship status – a decision which drew an almost immediate response from members of Congress, state officials and outside groups.

Opposition from Democrats on Capitol Hill was largely confined to press conferences and floor speeches. When they regained control of the House in November 2018, they also regained control of the congressional committees. For the last few months, numerous hearings were held and several committees began issuing subpoenas for documents related to the decision-making process.

Opposition also came from outside of Washington. More than two dozen states and cities, along with other groups, filed six separate lawsuits, which resulted in three federal judges blocking the Trump administration's decision. The plaintiffs of the lawsuits made several arguments, including that simply adding a question about citizenship status would reduce immigrant participation in the Census and thereby produce a population undercount, and that Secretary Ross's motivation was partisan and lacked a reasonable basis.

Eventually the matter made its way to the Supreme Court where the justices heard oral arguments in April. On June 27, the Court issued a 5-4 ruling – with Chief Justice John Roberts siding with the liberal wing of the court. The majority argued that the decision to add the citizenship question was not “substantively invalid,” but found that the reasoning behind Secretary Ross's decision was insufficient and “contrived.” In effect, the Supreme Court took issue with the means but not necessarily the ends of the decision to reinstate the citizenship question.

Justice Clarence Thomas' dissenting opinion, joined by Justices Brett Kavanaugh and Neil Gorsuch, pointed out that the majority decision "reflects an unprecedented departure from our deferential review of discretionary agency decisions." Cutting through the weeds, Justice Samuel Alito noted that "throughout our Nation's history, the Executive Branch has decided without judicial supervision or interference whether and, if so, in what form the decennial census should inquire about ... citizenship."

In response to the setback, the Trump administration, namely Attorney General William Barr, have been pursuing other avenues by which they can still legally add the citizenship question to the 2020 census. Executive action by President Trump is among the ways being weighed.

Is the Citizenship Question New?

Every 10 years – as mandated in Article I, Section 2 of the U.S. Constitution – the Department of Commerce conducts a nationwide count of every person living in the United States.

Inquiring about citizenship is nothing new in American history. Various versions of the citizenship question were asked several times between 1820 and 1890. From 1890 to 1950, every census inquired about citizenship, while long-form census questionnaires (which were sent to selected households) during the years 1970 – 2000 did as well. President Obama excluded the question from the 2010 census altogether. Thus, reinserting the citizenship question into all census questionnaires is far from a radical novelty.

Importantly, the American Community Survey (ACS) – which collects data on an ongoing basis and supplements the census – asks about citizenship status. The ACS, which replaced the long-form questionnaire in 2000, asks more detailed questions about immigration status, but more than 90 percent of the population will receive the short-form questionnaire that asks only about citizenship. So fears that answers will be used to hunt down and deport illegal aliens en masse amount to baseless fear-mongering.

Why the Issue Matters

The U.S. government and American citizens have a legitimate interest in accurately determining how many citizens and non-citizens reside in the country and its various localities. The decennial population count determines the size of each state's congressional delegation, as well as the votes each state can cast in the Electoral College. It also determines the distribution of federal funding for various programs to the states, including Highway Planning and Construction, Medicaid, SNAP ("food stamps"), the Section 8 Housing Choice Voucher program, and Head Start.

Therefore, states with larger populations such as California and New York have more elected federal representatives and also receive more in federal funding. They also happen to have larger populations of foreign nationals and illegal alien residents.

Secretary Ross's justification that adding the citizenship question will help enforce the Voting Rights Act (by helping to ensure an accurate count of legal voters was determined) is reasonable and sound policy. This is because an accurate count of citizens in various districts is key to detecting and countering voter fraud. If, for example, the number of votes cast in a particular district is significantly higher than the number of citizens, potential voter fraud may be occurring. In addition, states with large foreign or illegal alien populations fear losing not only elected officials but federal dollars too. As the foreign-born and illegal alien populations grow, the importance of including this question does as well.

The opponents of reinstating the citizenship question misleadingly claim that it will depress immigrant participation, thereby generating a population undercount. In reality, the census participation rate in 2010 – when President Obama removed the citizenship question – was no higher than in 2000.

Americans have the right to know how many citizens and non-citizens reside in their country. The fear that asking about citizenship may potentially deter aliens (who are in the U.S. unlawfully in the first place) from responding is not only groundless, but also in no way outweighs this right.