

Defending Common Sense for the 2020 Census

The framers of our Constitution wisely adopted the practice, utilized by many governments since biblical times, of mandating that a census be regularly taken to count the citizen and non-citizen populations and obtain other useful information.

The relevant Constitutional clause leaves the details of how each census (taken every 10 years) should be conducted to the discretion of the political branches, stating that the census should be conducted “in such manner as [Congress] shall by law direct.” Congress, in turn, has given the secretary of commerce broad discretion to determine how the Census Bureau should conduct the census.

The way the census is composed and carried out is often a matter of some controversy, and the 2020 census is no exception. Despite the fact that the content of census questions is clearly a policy matter for Congress and relevant executive branch officials to decide, numerous left-leaning states, cities, and organizations have filed multiple lawsuits to challenge the decision of the Secretary of Commerce to reinstate a question for the 2020 Census concerning United States citizenship status. A majority of previous censuses have included some form of citizenship question.

In May, the ACLJ filed an *amicus curiae* (“friend of the court”) brief in a lawsuit filed in New York City explaining why the Census Bureau is constitutionally authorized to ask the citizenship question. Recently, we also filed a friend of the court brief in a similar case in San Francisco.

The brief discusses the broad authority of Congress and the executive branch to decide what questions to include on the

census and also notes that the Constitution includes many provisions that differentiate between United States citizens and other individuals.

The Supreme Court has noted that “a host of constitutional and statutory provisions rest on the premise that a legitimate distinction between citizens and aliens may justify attributes and benefits for one class not accorded to the other,” and has also observed that “[a] multitude of federal statutes distinguish between citizens and aliens.” The Census Act itself states that “[a]ll permanent officers and employees of the Bureau shall be citizens of the United States.”

In addition, the brief notes that there will be many valid uses for the citizenship data that the 2020 Census will yield. For instance, data concerning the United States citizen voting-age population in a particular jurisdiction is often relevant, and necessary, in Voting Rights Act cases. Moreover, some states may desire to consider citizenship data in their future redistricting decisions.

The bottom line is that both the law and common sense dictate that the United States may conduct a count of its citizen and non-citizen populations. We hope that the federal courts will dismiss these meritless lawsuits, but the cases will likely make their way to the federal circuit courts of appeal, and eventually the Supreme Court, in the coming months. {eo}

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