

# April 1, 2020 is the Next Census Day: Everyone Should Be Counted, but How?

Jeffrey M. Wice

The U.S. Constitution (Article 1, Section 2) mandates that the federal government conduct a census once every 10 years to count the nation's residents. The answer to the question of "who" gets counted is simple: everyone gets counted. Accordingly, when the next census is taken on April 1, 2020, each person residing in the United States should be counted wherever he or she resides. This article reviews the impacts of the census, "how" people are counted, how the 2020 census procedures will differ from prior census cycles, and the ongoing debate about whether or not a proposed question to ascertain residents' citizenship status should be included on the short form that goes to all households.

## Why Does the Census Matter?

The census, which is conducted by the United States Department of Commerce's Census Bureau, and governed by Title 13 of the U.S. Code, is a cornerstone of our representative form of government. Population data are used to apportion congressional

districts among the 50 states and determine each state's electoral vote numbers for the following decade. Census data are used to redraw congressional districts within states. U.S. Supreme Court rulings affirm that the Constitution's guarantee of equal representation requires that congressional districts have approxi-

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Elizabeth OuYang, coordinator of New York Counts 2020, speaks during a news conference outside the Thurgood Marshall United States Courthouse, Nov. 27, 2018, in New York, where Judge Jesse Furman deliberated whether to ban a citizenship question from appearing on the 2020 census.

mately equal numbers of residents. States and local governments also use census data to redraw state legislative, county board, city council and other legislative district boundaries every 10 years.

Based on the Census Bureau's latest state population estimates, after the 2020 census, 13 states can expect the size of their congressional delegations to change. Arizona, Colorado, Florida, North Carolina, and Oregon are each projected to gain one district, while Texas is projected to gain two districts. By contrast, Illinois, Michigan, Minnesota, New York, Pennsylvania, Rhode Island and West Virginia are each projected to lose one district.

Census data also are used to help allocate more than \$600 billion in federal government resources annually among states, localities, and families; help state and local officials, community leaders, and nonprofit organizations identify current and future needs for health care, education, housing, food and income security, rural access to broadband, and other services; and help focus private-sector decisions about where to invest in job creation, new facilities, and marketing.

### **What Does the Census Traditionally Encompass?**

The Census Bureau sends a short form to every household address that it has identified. The census form has always asked about how many people live in each household as of census day and whether the housing unit is owned or rented. The census also asks for the names, ages, and race of each resident in the household.

The Census Bureau also collects data through other surveys for socioeconomic research, including employment, housing, business and other purposes. The American Community Survey is taken on an ongoing basis and provides population data that local officials, community leaders, and businesses use to understand the changes taking place in their communities between decennial census cycles.

The Census Bureau takes several years to review and research new questions

that appear on the decennial census short form before they are included. All questions are sent to the Congress for review before the decennial censuses are conducted. Questions for the 2020 census were submitted on March 29, 2018. Title 13 of the U.S. Code is silent about a congressional approval process of the proposed questions. Congressional leaders may urge changes to questions, or they may use the legislative process to effect change.

### **What Methods Are New for the 2020 Census?**

The 2020 census will be the first census to use the Internet and telephone call-in for responses from households. In prior census cycles, residents were asked to respond to the census using mail-back questionnaires. In 2020, the Census Bureau anticipates that most American households will use the Internet as the primary means to respond. Ultimately, residents will be able to select any of three methods: Internet, phone or paper. Since many households do not have Internet connectivity or because of cybersecurity concerns, the mail-back form will remain available for those who request response forms. Enumerators will canvass households that initially fail to respond; however, the Bureau will hire fewer field personnel than in past cycles.

With the Internet constantly expanding and changing, the Census Bureau will continue to fine tune its technical operations to make sure that census responses can be provided conveniently and that responses remain confidential as required by federal law in Title 13.

### **Where Will the 2020 Census Count People?**

New changes in the census will have an impact on where certain groups of people will be counted, especially military personnel. Troops who are "deployed" will be counted at their home bases or ports, not at the address from where they originally enlisted.

The Census Bureau will continue to count inmates at the prisons where they

are incarcerated, a decision that remains controversial. Many reform groups prefer that prisoners be counted at their original home addresses. For redistricting purposes after the census, several states, including Delaware, California, Maryland and New York already have enacted state laws to reallocate prisoners back to the addresses they had before incarceration. Proponents of such laws seek to end the inflating of populations of areas in which prisoners do not participate in local life (so-called "prison gerrymandering"). Those opposed to reallocating prisoners argue that it would deprive prison communities, typically in rural areas, of resources that they currently receive for maintaining the prisons.

The Census Bureau uses "group quarters" data to count people in large institutions at their "usual residence," or "the place where [people] live and sleep most of the time." It counts college students in dormitories as of census day if that is where they reside most of the time. Similar "group quarters" counts also are used to count long-term hospital patients and residents of other institutions. Special efforts also are made to count homeless people.

### **What's New for Census 2020 Questions?**

New for the 2020 census, the question "How is this person related to Person 1?", provides respondents with the options to check "Same-sex husband/wife/spouse" or "Same-sex unmarried partner" after options for "Opposite-sex" spouses and partners.

The Census Bureau undertook research to determine whether to change questions involving racial and ethnic origins. One question, "Is Person 1 of Hispanic, Latino or Spanish origin" will remain a separate question the way it appeared in the 2010 census questionnaire. For the 2020 census, however, respondents also can check "no" or boxes for "Mexican, Mexican Am, Chicano, Puerto Rican or Cuban," or include a different Latin American nationality.

The 2020 census also changes ways to answer the question “What is Person 1’s race?” Respondents can indicate “white” or “Black” or “African Am” and can add up to 16 characters to provide more origin information (such as Italian, French, Nigerian or even American). The Census Bureau, however, after research and study, decided against adding a separate box for “Middle Eastern or North African” origin.

As discussed in more detail below, the most controversial question added to the 2020 census has to do with citizenship.

### A New Citizenship Question Stirs Debate and Litigation

A citizenship question was last included in the short form for the 1950 census, a time when the number of immigrants was considered low. Since 1950 a citizenship question consistently has been omitted from the short form. Instead, for non-reapportionment purposes, citizenship status information has been gathered by

asking about citizenship either in the census “long form” (sent to a sampling of households), or, since 2000, by the American Community Survey.

In March 2018, Secretary of Commerce Wilbur Ross announced that the 2020 census would reinstitute the citizenship question on the short form by asking the citizen or non-citizen status of each household resident. This question did not undergo the testing and research that usually takes several years for new material to be added to the census short form; the impact of asking the question was not determined before the secretary’s announcement.

Proponents of the question originally claimed that adding the citizenship question to the census short form was necessary in order to better enforce the federal Voting Rights Act. Opponents reject the Voting Rights Act contention as specious and argue that the question was added for improper political purposes and to depress the census response rate, espe-

cially given the chilling effect of current immigration and refugee policy matters.

Six challenges to the citizenship question have been filed in federal courts in California (*California v. Ross*; *City of San Jose v. Ross*), Maryland (*Kravitz v. U.S. Department of Commerce*; *La Union Del Pueblo Entero v. Ross*) and New York (*New York et al v. U.S. Department of Commerce*; *New York Immigration Coalition v. U.S. Department of Commerce*). These cases have been filed by state and local governments, elected officials, civil rights and other non-profit organizations. The new Democratic leadership in the House of Representatives also may attempt to prohibit the Census Bureau from spending any federal funds to ask the citizenship question on the census short form.

On January 15, Federal District Court Judge Jesse Furman, ruling in the two New York cases, rejected the citizenship question and issued an injunction prohibiting the question from being

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included in the 2020 census form (although permitting the Census Bureau to continue to research on the question).

A challenge has also been filed in federal court in Maryland alleging that the Census Bureau is inadequately prepared for the 2020 Census and a severe undercount in minority communities will result (*NAACP v. Bureau of the Census*). Alabama is in court challenging the Census Bureau's policy of including all U.S. residents in the Census count used for congressional apportionment (*Alabama v. U.S. Department of Commerce*).

Resolution of these matters is time sensitive. The census forms are due to begin being printed in mid-2019 in order to meet the April 1, 2020 deadline. Resolving the status of the citizenship question before then is important to avert extra expense and potential delays associated with reprinting forms after mid-2019. Moreover, the president must send the state populations, gathered from new census data, to Congress by December 31, 2020, in order for Congress to reapportion House districts among the states.

### **What Is the Outlook on the Citizenship Question Litigation?**

As of January 2019, and publication of this article, four of the cases (heard in New York and California) had gone to trial; the Maryland cases were expected to be heard in late January. In one of the New York cases, the lead plaintiff, State of New York, was joined by sixteen other states, seven cities, and the U.S. Conference of Mayors. Those parties are suing the Department of Commerce, Commerce Secretary Wilbur Ross, and the Census Bureau on the grounds that adding the 2020 Census citizenship question to the short form is unconstitutional and illegal. New York and the other plaintiffs are requesting the court to enjoin the Commerce Department from including the citizenship question on the 2020 Census. While the New York case has been decided and is likely to be appealed, the Maryland and California cases won't be decided

until later in the winter or early spring. All the decisions are appealable to the federal appeals courts and to the U.S. Supreme Court, which many expect may rule by the end of the current Court term. On January 22nd the Trump administration asked the Supreme Court to bypass normal procedures and to decide quickly whether a question on citizenship can be placed on the 2020 Census.

The challenges all argue that the citizenship question is unconstitutional and illegal because it would violate the federal government's constitutional obligation to count the "whole number of persons" in the United States. They also argue that the Commerce Department acted improperly after it failed to follow standard procedures required under the federal Administrative Procedure Act. A few of the challenges also state that the federal administration added the citizenship question to intentionally discriminate against Latinos, Asian Americans, and other groups with large numbers of noncitizens in the United States.

In July 2018, New York's Southern District U.S. Court Judge Jesse Furman granted the federal government's motion to dismiss, in part, and denied it, in part, dismissing the plaintiffs' claims under the Enumeration Clause, but allowing claims under the Administrative Procedures Act and Due Process Clause to proceed. While the U.S. Supreme Court planned to hear arguments on February 19th on whether Commerce Secretary Wilbur Ross should have been deposed in the New York case, that hearing has been canceled because the issue is moot. Judge Furman made his decision based on the administrative record, making the need to depose Secretary Ross moot.

### **What Policy Justifications Are in Dispute?**

Secretary Ross has dismissed concerns that adding the citizenship question to the census short form would lead to an inaccurate count. He has attributed his decision to add the question to a Justice

Department request, one that he may have asked the Justice Department to make.

Specifically, a memorandum explained that the secretary acted in March 2018 in response to a December 2017 letter from the Department of Justice asking the Census Bureau to add the question in order to assist in the Justice Department's "enforcement of Section 2 of the Voting Rights Act."

Several months later, however, Secretary Ross provided a different justification. While acknowledging he had initiated the decision-making process to add the citizenship question to the census short form long before December 2017, he admitted asking the Justice Department to make the request that he later used to justify his decision.

It became evident during discovery (the fact-finding process of a case) in the New York trials that the citizenship question was not necessary to improve the Justice Department's administration of the Voting Rights Act.

John Gore, formerly assistant attorney general for civil rights in the Justice Department, had drafted a memorandum to the Commerce Department in December 2017 requesting the citizenship question as a tool for better Voting Rights Act enforcement. As mentioned earlier, in March 2018 Secretary Ross cited this need when he announced the citizenship question addition. Gore testified before Congress in mid-2018 that the Commerce Department had initiated the request.

In a deposition released in the New York litigation, Gore essentially agreed with an ACLU attorney that the citizenship question was "not necessary" to enforce the Voting Rights Act. Gore said he did not know of any voting rights cases where the Justice Department was found lacking citizenship data and he also said that the Trump administration had not filed any new cases under the federal Voting Rights Act.

In his January 15 decision, Judge Furman found that Secretary Ross "failed to consider several important



This activity stages a discussion about the proposed citizenship question on the 2020 Census. Students analyze news media to identify issues and arguments from relevant stakeholders, then formulate their own arguments to use in classroom debate or writing.

#### Materials:

- “Making Every Voice Count: The Census and Representation” PowerPoint. Available at <https://tinyurl.com/censuslesson>
- Textual Evidence for Census handout by Mary Ellen Daneels. Available at <https://tinyurl.com/courts-text-evidence>
- Philosophical Chairs Activity plan, reflection sheet, and assessment chart, from Scholastic. Available at [www.scholastic.com/teachers/lesson-plans/teaching-content/philosophical-chairs-discussion/](http://www.scholastic.com/teachers/lesson-plans/teaching-content/philosophical-chairs-discussion/)
- “New Citizenship Question in 2020 Census Sparks Backlash.” Video clip from *Washington Post*, [www.washingtonpost.com/news/politics/wp/2018/03/27/why-adding-a-citizenship-question-to-the-census-launched-a-political-firestorm/?noredirect=on&utm\\_term=.d5860f9e13de](http://www.washingtonpost.com/news/politics/wp/2018/03/27/why-adding-a-citizenship-question-to-the-census-launched-a-political-firestorm/?noredirect=on&utm_term=.d5860f9e13de)
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#### Recommended Procedures:

1. Use the PowerPoint presentation and the “Textual Evidence for Census” handout to introduce the Census, its constitutional mandate, how data is used, and plans for the 2020 Census. Explain that a question about citizenship has been proposed and that it is controversial and the subject of current court cases. Show the video clip from *The Washington Post*.
2. Distribute the article from Pew Research titled, “What to Know About the Citizenship Question,” and ask students to underline any details that indicate how individuals differ in opinion over the use of the citizenship question.
3. Have students work in pairs to sort the statements into either supporting the use of the citizenship question or opposing the use of the citizenship question, and plot them on a T-chart.
4. Give each student in the group one of the four primary source readings (articles Paxton; von Spakovsky; Strain; and Weser and Wolf) related to the citizenship question. Instruct students to closely read their source and look for at least three statements that paraphrase arguments from the Pew Research article, and plot them on the T-chart.
5. To check understanding, have students with the same reading gather in a corner of the room, bringing statements with them. Students then split into pairs and share with one another the main points from both readings. Listeners should paraphrase back what they heard and complete the T-chart.
6. Ask students to identify elements of a three-shape reflection, and note on their T-charts:
  - a. What is one “pointed” (triangle) idea that stood out to them about the use of the citizenship question?
  - b. What is one idea that “squared” or agreed with their thinking?
  - c. What is one idea that is still “circling” in their head?
7. Students should regroup as a class. Ask students to share their “circle” thoughts.
8. Conduct a Philosophical Chair Activity with students for further discussion. Introduce students to, or remind students of, the activity procedures and rules.

#### Additional Activities:

- Students can write an elected official advocating their position on the citizenship question.
- Students can write letters to the editor or craft an editorial cartoon on the issue.
- Students can prepare a PSA campaign informing others of the 2020 census.
- Students can engage with community experts in an informed conversation to solicit the perspectives of members of the community about the upcoming census and the impact the citizenship question could have on representation in your area.

This activity is adapted from one developed by **Mary Ellen Daneels**. She is a National Board Certified teacher who teaches at West Chicago Community High School, in Illinois.

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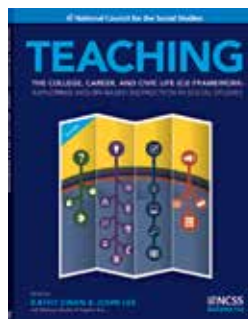


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aspects of the problem; alternatively ignored, cherry-picked, or badly misconstrued the evidence in the record before him; acted irrationally both in light of that evidence and his own stated decisional criteria; and failed to justify significant departures from past policies and practices.”

Judge Furman also found that “those violations are no mere trifles. The fair and orderly administration of the census is one of the secretary of commerce’s most important duties, as it is critical that the public have ‘confidence in the integrity of the process.’”

On January 22nd, the U.S. House Committee on Oversight and Reform chairman, Rep. Elijah Cummings, (D-MD), announced that Secretary Ross would appear before the committee on March 14 to discuss the citizenship question.

### Lessons to Be Learned in Real Time

This nation has undertaken a census every 10 years since 1790. As preparations for and implementation of the 2020 census unfold in coming months, lessons will be learned in real time about our democracy—from constitutional questions and administrative rulemaking practices, to how technological changes affect government operations and how social decisions get made. Keep a close eye on the 2020 census process to learn about these and more. 🌐

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