



Written by [Steve Byas](#) on April 24, 2019

## Supreme Court Appears Poised to Uphold Citizenship Question

When the Trump administration's Commerce Department, led by Secretary Wilbur Ross, opted to add a "citizenship" question to the decennial federal census, Democrats became alarmed. They contended that even asking such a question may lead to some non-citizens evading a response to the census, which was authorized by the U.S. Constitution, for the express purpose of counting every person in the country.



Evidently, Democrats are worried that if illegal residents (there would be no reason for a legal resident to be concerned) fail to answer the question for fear of deportation, Democrat electoral success could be diminished. Because of this, several states controlled by Democratic politicians filed suit in federal court, asking for the offending question to be removed.

In oral arguments this week in the Supreme Court, it appears that a majority of the justices are inclined to uphold the decision of the Commerce Department to include the question in the 2020 census. Because the forms must be printed soon, the Court has expedited the case, and a decision is expected in June.

Article I, Section 2 of the Constitution authorizes the taking of the census. "The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they [Congress] by law direct."

The first census was taken in 1790. It is believed that the first census produced an undercount of 10 percent, or even more, largely because many Americans hid from the census takers. At that time, historically speaking, governments had conducted censuses not to determine how many representatives each state could have in the lower house of Congress, but for purposes of taxation. Perhaps the most famous census in history — the one conducted under Caesar Augustus, in which Jesus' mother Mary and her husband, Joseph, were counted along with the baby Jesus — was explicitly for the purpose of taxation. In the census taken after William the Conqueror took over England in the 11th century, census takers counted all of a person's taxable property.

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But the U.S. census, by the Constitution, is only for determination of how many representatives a state is entitled to send to the U.S. House of Representatives. Once the count is made, a state is informed the number of representatives they are entitled to, and it is left up to the state legislatures to draw district boundaries.

Three lower courts ruled that the Commerce Department could not ask every U.S. resident about citizenship, arguing that the question would discourage many immigrants from being counted. But the question was routinely asked of every U.S. household up until 1950. Clearly, the concern is that illegal aliens (because legal aliens would have nothing to fear from the question) would wind up not being



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counted, and thus reduce the number of congressional districts likely to vote for a Democratic representative.

Five of the justices — Samuel Alito, Neil Gorsuch, Clarence Thomas, Brett Kavanaugh, and Chief Justice John Roberts — have all indicated that they see nothing illegal about asking the question about citizenship. Kavanaugh asked, if Congress is so concerned about the question (Democratic House Speaker Nancy Pelosi sent a lawyer, Douglas Letter, to express the opposition of the House to the question), then, “Why doesn’t Congress prohibit the asking of the citizenship question?”

Even liberal Justice Ruth Bader-Ginsburg appeared skeptical. “So, one question is who should decide? Congress is silent. Should the court then step in?”

Letter complained that Ross and an official from the Trump Justice Department declined to answer their questions, citing the litigation before the court. “Obviously, the House needs the information. And yet we’re being told we can’t have the information because it’s only for you.”

“So, what more information does Congress need to address the problem?” Chief Justice Roberts asked.

Kavanaugh added, “Why doesn’t Congress prohibit the asking of a citizenship question in the same way that Congress explicitly provided that no one can be compelled to provide religious information?”

Letter protested that, while Congress could attempt to prohibit the asking of the citizenship question, he suggested that the court should simply interpret both the statute and the Constitution. In other words, what Pelosi’s lawyer was urging the court to do is to achieve the desires of the Democrats through judicial action, as they have achieved so many of their liberal goals in the past.

But both Gorsuch and Kavanaugh, the two newest members of the court, noted that the question has been asked many times in the past, and that Congress has already acted — giving discretion to the Commerce Department to create the form.

Roberts added that while the principal purpose of the form is to count people, it has been “quite common” to ask other questions of a demographic nature. “Sex, age, things like that. You go back and it looks, you know, do you own your house? Do you own a radio? I mean, the questions go quite beyond how many people there are.”

“This [asking the citizenship question] is a solution in search of a problem,” complained Justice Sonia Sotomayor.

Perhaps it is. Perhaps not. But the Framers of the Constitution left such questions in the hands of the Congress — and they chose to let the Commerce Department create the form for the 2020 census. Now, some in Congress do not like the result, because they fear it will reduce the chances for political success for the Democratic Party. As suggested by more than one member of the court, Congress could vote to overturn the work of the Department of Commerce. But, of course, since they do not have the votes to do so, they try to pull the Court Card — only this time, it appears that a “Trump” card has already been played.

Of course, when the Supreme Court actually rules on the issue in June, some, or all, of the five justices mentioned above could decide to oppose the citizenship question. We will have to wait and see.



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