

Trump asserts new privilege claim as House committee passes contempt resolution

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Only hours after the Trump administration claimed executive privilege to withhold documents concerning the 2020 census from Congress, the House Oversight Committee passed a contempt resolution against both Attorney General William Barr and Commerce Secretary Wilbur Ross for their failure to respond to subpoenas for the documents.

The twin actions mark a new escalation of the political warfare in Washington, one that has nothing to do with the Mueller investigation or allegations of Russian meddling in US elections. Rather, the dispute involves evidence of a brazen attempt by the Trump administration to rig elections for the next decade in favor of the Republican Party by deliberately undercounting areas with large immigrant populations, which tend to vote Democratic.

The conflict revolves around the decision of Commerce Secretary Wilbur Ross, a billionaire asset-stripper who almost single-handedly destroyed the steel industry in Pennsylvania, Ohio and Indiana, to add a question to the 2020 census on immigration status.

This decision came despite objections from professional staff at the Bureau of the Census, who cited well established findings that asking about immigration status would discourage participation by both legal immigrants and the undocumented, leading to a significant undercount—amounting to four million people, with some estimates even higher.

The Constitution provides that representation in Congress will be apportioned by “counting the whole number of persons in each State,” not the number of citizens. As a result, non-citizens counted in the census are included in the population totals for congressional districts. Any measure that reduces the count of non-citizens would reduce the number of congressional seats in areas with large immigrant populations,

perhaps by a dozen or more.

Right-wing Republican political operatives have long complained of the constitutional requirement to include non-citizens in the apportionment of congressional seats, but rather than seeking to amend the Constitution, an effort that would undoubtedly fail, they have worked behind the scenes to rig the next census.

The Trump administration moved quickly in 2017 to add an immigration status question to the census. It recently came to light that a longtime Republican Party consultant on redistricting, Thomas Hofeller, had pushed for the addition of the census question, citing its electoral benefit for “Republicans and Non-Hispanic Whites.”

Hofeller had even suggested a cynical pretext for adding immigration status to the census: that the Department of Justice wanted the question to assist it in enforcing the Voting Rights Act. In reality, of course, the political motivation was just the opposite. The Trump administration and the Republicans wanted to reduce, not protect, minority representation in Congress.

But top administration officials, headed by Secretary Ross, have given sworn testimony that they added the question on immigration status because of the Justice Department’s concerns about enforcing the Voting Rights Act. The Democratic Party-controlled House Government Oversight Committee is seeking internal Commerce Department and Justice Department memos, and communications between the two departments, that would demonstrate that the voting rights pretext is a sham and that Ross and others lied.

The blanket assertion of executive privilege to protect all such documents is an unprecedented assertion of presidential power and would set a precedent for complete impunity for the executive branch. The

misconduct by Ross and lower-ranking officials at both Commerce and Justice is so flagrant that any significant congressional oversight would lead to perjury prosecutions and forced resignations.

The executive privilege claim is different from that asserted by Nixon during the Watergate crisis—rejected by the US Supreme Court—and by later presidents, with more success, which relates to communications between the president and his immediate aides, particularly those within the White House. There is no indication that the White House gave specific direction here: Ross and the other officials knew what they were supposed to do to benefit the Republican Party and required no special orders from Trump personally.

The version of executive privilege being asserted in the case of the census decision, called the “deliberative process privilege,” is by no means absolute and can be overridden by evidence of misconduct or bad faith by the officials involved—of which there is plenty—or by demonstrating the need to know on the part of those seeking the documents, in this case, the House Government Oversight Committee.

By claiming executive privilege in this instance, where the oversight power of Congress is directly involved, Trump is effectively declaring that Congress has no authority to monitor the activities of the executive branch, an unconstitutional assertion of supremacy of the executive over the legislature.

The congressional investigation into the origins of the census question on immigration status is separate from the legal challenge to the question brought by several states and immigrants’ rights groups, which was heard by the Supreme Court on April 23. The court is expected to release a decision this month on whether Ross had the authority to add the question on immigration status, and it is widely expected to be a 5-4 ruling upholding the Trump administration.

The contempt resolution passed the Oversight Committee by a 24-15 vote, with every Democrat and one Republican, Justin Amash of Michigan, supporting it. Amash is the lone Republican to date to suggest that Trump has carried out actions that are impeachable offenses.

The resolution commits the committee “to proceed with both criminal and civil actions to enforce the Committee’s bipartisan subpoenas.” This is a stronger action than that taken by the House Judiciary

Committee against Barr over his refusal to provide a complete and uncensored version of the Mueller report. That resolution was limited to civil contempt.

“What we have learned so far in this investigation is quite disturbing,” Oversight Committee Chairman Elijah Cummings said. He called the invocation of executive privilege “another example of the Trump administration’s blanket defiance of Congress’ constitutionally-mandated responsibilities.”

Wednesday’s actions followed the House vote Tuesday, adopted along party lines, 229-191, to authorize committees to go directly to court to seek enforcement of subpoenas without having to obtain a vote of the full House in each instance.



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