

US Supreme Court halts Trump plan for citizenship question in 2020 census

Fred Mazelis
28 June 2019

In a split decision announced Thursday morning, the US Supreme Court at least temporarily halted the Trump administration's plan to include a question on citizenship in the 2020 census, a move that opponents predicted would lead to an undercount of at least 6.5 million in the official population figures, tabulated according to the mandate of the Constitution once every decade.

The high court ruling came in an appeal by the Justice Department of a US District Court decision that had thrown out the census question and accused the administration of legal violations that would lead to discrimination against immigrants. The court found that a question on immigration status was not inherently unconstitutional, having been part of many census surveys until 1950. But a 5–4 majority, with Chief Justice John Roberts joining the four moderate liberals, rejected the Trump administration's rationale for including the immigration question in 2020 and returned the case to a federal district court for further action.

The census results have wide political and social implications. The population totals for various states are used in decisions on the allocation of federal funding, and they also come into play when congressional redistricting takes place every decade, with states gaining or losing seats in the House of Representatives based on their relative share of the total population.

Since a citizenship question would undoubtedly intimidate immigrants, including both US citizens and especially the undocumented and those in households that include the undocumented, a drastic undercount of the population is guaranteed. Since congressional districts and federal funding are based not on the number of citizens but on the total population, the

consequences of the undercount would be to reduce the political representation of immigrant-heavy districts, most of them densely populated urban centers, and shift federal resources away from them.

Commerce Secretary Wilbur Ross had claimed that the question, which has not been included on census forms since 1950, was necessary to comply with the federal Voting Rights Act. This argument was absurd on its face, since the Republican Party has been at war with the Voting Rights Act for several decades, claiming that there was no longer any justification for special attention to racially discriminatory practices in southern states.

Immigrant rights groups opposed to the inclusion of the census question pointed to evidence that the real purpose was to strengthen the Republican Party by reducing the political representation of heavily immigrant areas that tend to vote Democratic.

Chief Justice Roberts wrote the majority opinion that was joined by the Court's four Democrat-appointed justices, while joining with the four more right-wing justices in other parts of the splintered decision. He made clear that he could not accept Ross' account. "We cannot ignore the disconnect between the decision made and the explanation given," he wrote, saying that the official explanation "appears to have been contrived."

"If judicial review is to be more than an empty ritual," he continued, "it must demand something better than the explanation offered for the action taken in this case."

The Court unanimously agreed that the Census Bureau, directed by the Department of Commerce, was within its rights in deciding what to include on the decennial questionnaires that are sent to every US household. "But agencies must pursue their goals

reasonably,” Roberts continued. “Reasoned decision-making ... calls for an explanation for agency action. What was provided here was more of a distraction.”

In perhaps the most significant rebuke to the Trump administration, Roberts added, “the secretary was determined to reinstate a citizenship question from the time he entered office, instructed his staff to make it happen, waited while Commerce officials explored whether another agency would request census-based citizenship data ... and adopted the Voting Rights Act rationale late in the process ... Altogether, the evidence tells a story that does not match the explanation the secretary gave for his decision.”

Documents show that Ross discussed the citizenship issue with Stephen Bannon when Bannon was working in the White House as Trump’s chief strategist, and that he had later consulted with former Kansas Secretary of State Kris Kobach, one of the most vicious of the anti-immigrant backers of Trump.

The case was sent back to the lower court for further action. While it is still possible the administration could come back with a rationale for the question that would satisfy Roberts, officials have already stated they faced a June 30 deadline before proceeding with the complex preparations and printing for the census. In addition, the language of Roberts, with its suggestion that Ross had been economical with the truth, amounted to a rebuke of the Commerce Secretary and the Trump administration as a whole. In the careful words of the Chief Justice, the court was presented “with an explanation for agency action that is incongruent with what the record reveals...”

The Trump administration immediately sought to salvage the immigration question, suggesting that the deadline for finalizing the questionnaire could be pushed back to October 31. Trump even declared on Twitter, “I have asked the lawyers if they can delay the census, no matter how long, until the ... United States Supreme Court is given additional information from which it can make a final and decisive decision on this very critical matter.”

In this, as in many things, Trump ignores the express provisions of the US Constitution, which requires a new census enumeration every ten years. Since the last census was in 2010, postponing the 2020 census would be flatly unconstitutional.

In a separate lawsuit, a US District Court judge in the

state of Maryland ruled last Monday that the inclusion of a question on citizenship in the census raised equal protection and related issues, based on the Fourteenth Amendment to the Constitution as well as subsequent civil rights legislation. This ruling was based on evidence that has recently come to light on the role of Dr. Thomas Hofeller, a Republican political consultant who died last year, and whose computer files revealed that he had been involved in developing the claim that the Voting Rights Act required the citizenship question. In fact, in what is close to a “smoking gun” indicating the true motives involved, Hofeller advised that the question would “be advantageous to Republicans and non-Hispanic whites.”

The role of Hofeller was revealed after the oral arguments on the case before the high court, which took place in late April. At that time the right-wing five-justice majority seemed favorable to the administration’s arguments.

The fact that Roberts appears to have shifted his position in the two months since then is another illustration of the supremely political character of the Supreme Court. The Chief Justice, a George W. Bush appointee, has become the so-called “swing vote” in a number of cases, particularly after the replacement of Anthony Kennedy by Brett Kavanaugh in 2018. He took on that role again on June 27.



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