Questionable?
Why an Untested Citizenship Question Threatens the 2020 Census

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Constitutional Mandate

• “Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State….”

• “The actual Enumeration shall be made…within every subsequent Term of ten Years, in such Manner as [Congress] shall by Law direct.”

• Thus core constitutional purpose of the Decennial Census is to conduct an accurate enumeration of the U.S. population
• Legal Foundations

- **Census Act** places the **Census Bureau** in the **Department of Commerce** and assigns the responsibility of enumeration to the Commerce Secretary.

- Census Act of 1790 established the “**place of usual residence**” as the principle in determining where people should be counted.

- The **census has always included non-citizens** when their place of usual residence is the United States.

• **Court Oversight**

- In Wisconsin v. City of New York the court held that the Secretary’s decisions must be consistent with the “**constitutional goal of equal representation**” and bear a “**reasonable relationship to the accomplishment of any actual enumeration of the population.**”
U.S. Census Bureau Statistical Quality Standards

“These standards provide a means to ensure consistency in the processes of all the Census Bureau’s program areas, from planning through dissemination... will ensure the utility, objectivity, and integrity of the statistical information... to Congress, to federal policy makers, to sponsors, and to the public.”

“Data collection instruments and supporting materials must be pretested with respondents to identify problems....”
Pretesting

that “data collection instruments and supporting materials must be pretested with respondents to identify problems...and then refined, prior to implementation...”

One or more of the following pretesting methods must be used:

- Cognitive interviews
- Focus groups
- Usability Testing
- Behavior Coding.
- Respondent Debriefings
- Split Panel Tests
Evolution of the Census Questionnaire

Early Census forms were simple

- Name
- Age
- Sex
- Color and Slave Status
Over time forms became more complex

- Name
- Age
- Sex
- Color and Slave Status
- Occupation
- Value of Real Estate
- Value of Personal Estate
- Birthplace
- Marital Status
- School Attendance
- Literacy
- Whether deaf, dumb, blind, insane, idiotic, pauper, or convict

1860
By mid-20th century the forms had become very complicated and burdensome

- Name
- Relation to head
- Age
- Sex
- Race
- Marital Status
- Birthplace
- Citizenship
- Employment status
- Occupation
- Industry
- Hours worked
- Industry
- Residence Last Year
- Parental Birthplace
- Education
- Income & Earnings
- Veteran Status
In 1970 the “census” was divided into two separate forms:

- **Short Form**: All Households (age, relation to head, sex, age, race, marital status, Hispanic origin, education)
- **Long Form**: 20% Sample of Households

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### Short Form (10 Questions)

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### Long Form (10 Questions)

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### Housing Questions (Page 3)

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### Other Questions

- Fill in the blanks for each person listed in Question 1.
- Write in numbers, initials, or letters as required.
- Use the columns to list data for each person.
Long Form: 19 Pages

- 30 Questions on Housing
- 33 Questions on Each Person in Household
- Including one on citizenship
In 2010 the **Long Form was replaced by the American Community Survey**

- 28 Pages
- 23 Housing Questions
- 48 Person Questions (including citizenship)
- Annually administered to a 2% sample of households (around 3.5 million households)
- Used to produce annual estimates for states, counties, tracts, and block groups
- **Since 1970 Long Form/ACS data have always been deemed suitable and appropriate for all legislative and regulatory mandates**
Procedure for Adding Question to the Census

1. Department of Commerce receives request from Congress or Federal Agency.
2. D of C works with OMB to determine whether request fulfills legal, regulatory, or constitutional requirements.
3. D of C notifies Congress of intent to add new question.
4. D of C notifies public in Federal Register & invites comments.
5. D of C requests approval of field test from OMB.
6. OMB responds to comments 30 days after closing date.
7. D of C notifies public of field test in Federal Register & invites comments.
8. Field testing occurs.
9. Census Bureau makes operational adjustments, re-designs questionnaires, re-enginreers data capture, & creates new training modules.
10. Question implemented on Census.
Historically it has been **exceedingly difficult to get a new question included on the long form or more recently the ACS, much less the census short form**

- The **last question added to the short form was Hispanic origin** and that was in 1980

- A **recent proposal to combine the race and Hispanic origin questions was rejected** after years of research and comment

- **OMB Statistical Directive Number 1 requires that “a federal statistical agency must be independent from political and other undue external influence in developing, producing, and disseminating statistics”**
U.S. Department of Commerce Announces Reinstatement of Citizenship Question to the 2020 Decennial Census

Today, the U.S. Department of Commerce announced that a question on citizenship status will be reinstated to the 2020 decennial census questionnaire to help enforce the Voting Rights Act (VRA). Secretary Ross’s decision follows a request by the Department of Justice (DOJ) to add a question on citizenship status to the 2020 decennial census.

Please click HERE to view the memorandum directing the Census Bureau to reinstate a question on citizenship to the 2020 decennial census.
To: Karen Dunn Kelley, Under Secretary for Economic Affairs

From: Secretary Wilbur Ross

Date: March 26, 2018

Re: Reinstatement of a Citizenship Question on the 2020 Decennial Census Questionnaire

Dear Under Secretary Kelley:

As you know, on December 12, 2017, the Department of Justice ("DOJ") requested that the Census Bureau reinstate a citizenship question on the decennial census to provide census block level citizenship voting age population ("CVAP") data that are not currently available from government survey data ("DOJ request"). DOJ and the courts use CVAP data for determining violations of Section 2 of the Voting Rights Act ("VRA"), and having these data at the census block level will permit more effective enforcement of the Act. Section 2 protects minority population voting rights.
What We Now Know

The Department of Commerce has since admitted that:

- A White House staff member called Secretary Ross in April of 2017 to ask the Secretary if he would be willing to speak to a prominent Republican state official about the possibility of adding a citizenship question to the Decennial Census.

- The Secretary’s conversation with the state official came before any request from DOJ to add a citizenship question to the Decennial Census.

- In May of 2017 the Secretary Ross emailed his Deputy Chief of Staff stating that he was “mystified why nothing have [sic] been done in response to my months old request that we include a citizenship question [on the 2020 Decennial Census].”
In a sworn deposition, Secretary Ross’s Deputy Chief of Staff and Director of Policy testified that:

- **His job was to “help [the Secretary] find the best rationale” for adding the question, because “[t]hat’s what a policy person does” and that he did not “need to know what [the Secretary’s] rationale might be, because it may or may not be one that is … legally-valid.”**

- **On May 2, 2017 he advised the Secretary that it would be necessary to “work with Justice to get them to request that citizenship be added back to a census question . . . .”**

- **When he contacted DOJ on May 4, 2017 for the purpose of adding a citizenship question he was not seeking to promote more effective enforcement of the Voting Rights Act.**

- In a sworn deposition, the Acting Assistant Attorney General for Civil Rights admitted
  - **He did not know whether citizenship data produced from the census questionnaire would in fact be better for purposes of Voting Rights Act enforcement than the citizenship data that DOJ already had at its disposal.**
Conclusions

The proposed inclusion of the citizenship question on the Decennial Census:

1. Did not originate in the Department of Justice
2. Has no legislative or constitutional justification
3. Violates well-established Census procedures for adding a question to the census and violates the Census Bureau’s published Statistical Quality Standards
Conclusions, continued

4. The possible inclusion of the citizenship question on the 2020 Census violates the OMB directive that “a federal statistical agency must be independent from political and other undue external influence in developing, producing, and disseminating statistics”

5. The addition of the citizenship question to the census short form carries serious risks for the success of the 2020 enumeration.