



August 7, 2018

Ms. Jennifer Jessup
Departmental Paperwork Clearance Officer
Department of Commerce
Room 6616
14th St and Constitution Ave NW
Washington, DC 20230

RE: Comments on Proposed Information Collection on 2020 Census, Docket ID: USBC-2018-0005

Dear Ms. Jessup:

We are writing on behalf of Demos to urge the Commerce Department to reject the addition of a citizenship question to the questionnaire to be used in the 2020 decennial Census.

Demos is a public policy organization working for an America where we all have an equal say in our democracy and an equal chance in our economy. Our name means “the people.” It is the root word of democracy, and it reminds us that in America, the true source of our greatness is the diversity of our people. Our nation’s highest challenge is to create a democracy that truly empowers people of all backgrounds, so that we all have a say in setting the policies that shape opportunity and provide for our common future.

Demos is concerned about the extremely harmful impact that adding this completely untested question will have on the accuracy of the 2020 Census. An accurate census count is critical not only to fair political representation, but to countless other functions of local, state and federal governments, as well as the data needs of businesses, academicians, and NGOs such as Demos.

The Paperwork Reduction Act (“PRA”) requires the Commerce Department to review public comments on the proposed change in order to

1. evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;
2. evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information;

3. enhance the quality, utility, and clarity of the information to be collected; and
4. minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology[.]¹

This comment focuses on the first and third criteria. Adding a question on citizenship status to the decennial census to which every household in the United States is required to respond is entirely unnecessary for the proper performance of the Census Bureau’s functions, and will greatly impair the quality, utility and clarity of the 2020 Census.

The proposed citizenship question for the decennial Census would ask of each household member: “Is this person a citizen of the United States?” Respondents would have to choose one of the following responses: 1) “Yes, born in the United States[;]” 2) “Yes, born in Puerto Rico, Guam, the U.S. Virgin Islands, or Northern Marianas[;]” 3) “Yes, born abroad of U.S. citizen parent or parents[;]” 4) “Yes, U.S. citizen by naturalization - Print year of naturalization[;]” and 5) “No, not a U.S. citizen [.]”

Even before Commerce Secretary Wilbur Ross announced the decision to include a question on citizenship, experts strongly cautioned against adding such a question, both because it will inevitably decrease the census response rate, and because it was already too late to conduct any testing of the question, directly contrary to the Census Bureau’s long-established practice of extensive testing of the entire set of questions to be included in the census.

For example, the American Statistical Association – the world’s largest community of statisticians—stated in a January 2018 letter to Secretary Ross:

As you know, the challenge of any census is maximizing the participation of all residents. In essence, it is critical to minimize the undercount, whether for geographic regions or for certain populations. . . . Maximizing census participation is particularly challenging in areas or among populations with distrust or suspicion of the government Adding a citizenship question at this late stage of the decennial census process would likely increase distrust or suspicion of the government among immigrants, many of whom are already anxious about government inquiries and activities.²

And regarding the issue of testing a potential citizenship question, the letter stated:

¹ 44 U.S.C. § 3506(c)(2)(A)(i)-(iv).

² <http://www.amstat.org/asa/files/pdfs/POL-CitizenshipQuestion.pdf>

[A]dding a question at this late stage of the Census process does not allow time for adequate testing to incorporate new questions, particularly if the testing reveals substantial problems. Further, a new question undermines the validity of the extensive testing of the current questions carried out to date.³

Underscoring these concerns, the Census Bureau's own researchers reported, in November 2017, that internal testing of the planned 2020 questionnaire even *without a specific question on citizenship* had revealed increased fear and non-response behaviors among respondents compared to previous years. The Bureau's staff reported comments such as the following:

"The possibility that the Census could give my information to internal security and immigration could come and arrest me for not having documents terrifies me." (Spanish interview)

"Particularly with our current political climate, the Latino community will not sign up because they will think that Census will pass their information on and people can come looking for them." (Spanish interview)

English-speaker mentioned the "Muslim ban[.]"⁴

Secretary Ross has himself acknowledged that Census Bureau professionals warned him that adding a question on citizenship "would negatively impact the response rate for noncitizens" and that "[a] significantly lower response rate by non-citizens could reduce the accuracy of the decennial census and increase costs for non-response follow up ("NRFU") operations."⁵ A recently disclosed internal Census Bureau memorandum includes even sharper warnings from Census Bureau staff, who stated that adding a question on citizenship would be "very costly, harm[] the quality of the census count, and would use substantially less accurate citizenship status data than are available from administrative sources."⁶

³ *Id.*

⁴ Mikelyn Meyers, Research Sociolinguist, Language and Cross-Cultural Research Group, Center for Survey Measurement, Associate Directorate for Research and Methodology, presentation on "Respondent Confidentiality Concerns and Possible Effects on Response Rates and Data Quality for the 2020 Census" before the National Advisory Committee on Racial, Ethnic, and Other Populations Fall Meeting November 2nd, 2017, slide 8, available at <https://www2.census.gov/cac/nac/meetings/2017-11/Meyers-NAC-Confidentiality-Presentation.pdf>

⁵ Letter from Wilbur Ross, Sec'y of Commerce, U.S. Dep't of Commerce, to Karen Dunn Kelley, Under Sec'y for Econ. Affairs, U.S. Dep't. of Commerce (Mar. 26, 2018), available at https://www.commerce.gov/sites/commerce.gov/files/2018-03-26_2.pdf.

⁶ Memorandum to Wilbur L. Ross, Jr., Sec'y of Commerce, from John M. Abowd, Chief Scientist and Associate Director for Research and Methodology, United States Census Bureau, June 18, 2018, available at <http://www.osec.doc.gov/opog/FOIA/Documents/AR%20-%20FINAL%20FILED%20-%20ALL%20DOCS%20%5bcERTIFICATION-INDEX-DOCUMENTS%5d%206.8.18.pdf#page=1289>.

A federal court recently summarized additional warnings from Census Bureau professionals against including a question on citizenship as follows:

[T]he last time that the census asked every respondent about citizenship was sixty-eight years ago, in 1950. Notably, since [1950],...the Census Bureau and former Bureau officials have opposed periodic efforts to reinstate a citizenship question on a universal basis. In 1980, for example, several plaintiffs . . . sued the Census Bureau, contending that the census was constitutionally required to count only citizens. *Fed'n for Am. Immigration Reform*, 486 F. Supp. at 565. In that litigation, the Census Bureau argued that reinstating a citizenship question for all respondents would “inevitably jeopardize the overall accuracy of the population count” because noncitizens would be reluctant to participate, for fear “of the information being used against them.” *Id.* at 568. Likewise, in Congressional testimony prior to the 1990 census, Census Bureau officials opposed reinstating a citizenship question for all respondents, opining that it could cause people to “misunderstand or mistrust the census and fail or refuse to respond.” Exclude Undocumented Residents from Census Counts Used for Apportionment: Hearing on H.R. 3639, H.R. 3814, and H.R. 4234 Before the Subcomm. on [13] Census & Population of the H. Comm. on Post Office & Civil Serv., 100th Cong. 50-51 (1988) (statement of John G. Keane, Director, Bureau of the Census); *see also* Census Equity Act: Hearings on H.R. 2661 Before the Subcomm. on Census & Population of the H. Comm. on Post Office & Civ. Serv., 101st Cong. 42-44 (1989) (statement of C. Louis Kincannon, Deputy Director, Bureau of the Census).⁷

The census will be used for the entire coming decade to determine states’ representation in the U.S. House of Representatives and the electoral college, and to guide the drawing of district lines at every level of government. It is also used to allocate approximately \$800 billion in federal funding that is distributed based on state population. Adding a last-minute question to the census that will undoubtedly decrease the response rate in communities that are already difficult to count is therefore a direct assault on racial equity. It will directly deprive communities of color of political power and vital resources.

In addition, there is no cogent argument that the Census Bureau’s existing practices for assessing citizenship data are insufficient. The Secretary has claimed that he decided to add the citizenship question because the U.S. Department of Justice had advised him that it was necessary for enforcement of the Voting Rights Act. This explanation, however, has been exposed as

⁷ *State of New York v. U.S. Department of Commerce*, 18-CV-2921 (E.D.N.Y.), Order on Motion to Dismiss, July 26, 2018, at 12-13 (footnote omitted).

pretextual, as Judge Furman noted in his opinion in *State of New York v. U.S. Department of Commerce*:

While Secretary Ross initially (and repeatedly) suggested that the Department of Justice’s request triggered his consideration of the issue, it now appears that the sequence of events was exactly opposite. In his memorandum, Secretary Ross stated that he “*set out to take a hard look*” at adding the citizenship question “[*f*]ollowing receipt” of a request from the Department of Justice on December 12, 2017. (See Ross Mem. 1 (emphases added)). Yet in a June 21, 2018 supplement to the Administrative Record, Secretary Ross admitted that *he* “began considering” whether to add the citizenship question “[s]oon after” his appointment as Secretary in February 2017 — almost ten months before the “request” from DOJ — and that, “[a]s part of that deliberative process,” *he and his staff* asked the Department of Justice if it “would support, *and if so would request*, inclusion of a citizenship question.” (Docket No. 189-1 (emphasis added)). Along similar lines, in a May 2, 2017 e-mail to Secretary Ross, the director of the Commerce Department’s office of policy and strategic planning stated that “[w]e need to work with Justice *to get them to request* that citizenship be added back as a census question.” (Docket No. 212, at 3710 (emphasis added); see also *id.* at 3699 (e-mail from Secretary Ross, earlier the same day, stating that he was “mystified why nothing have [sic] been done in response to my months old request that we include the citizenship question”). Slip Op. 65-66 (footnotes and citations omitted).⁸

Additional emails have revealed that, rather than initiating with the Department of Justice, Kansas Secretary of State Kris Kobach contacted Secretary Ross regarding the addition of a citizenship question in July 2017, “at the urging of Steve Bannon.”⁹

In any event, there is no merit to the argument that adding a citizenship question to the census is necessary for enforcement of the Voting Rights Act. The Department of Justice has successfully enforced the Voting Rights Act throughout the 53 years since its enactment using existing census data on citizenship, and has never previously suggested that a citizenship question is necessary for such enforcement. Researchers, policy analysts, and advocates across the country, including those at Demos, have long found the data from the long-form census or the American Community Survey to be adequate for assessing citizenship information, and see no need for

⁸ *Id.* at 65-66 (footnotes omitted).

⁹ “Commerce Secretary Grew Impatient over Citizenship Question, Emails Reveal,” NPR, July 24, 2018, available at https://www.npr.org/2018/07/24/631537992/commerce-secretary-grew-impatient-over-census-citizenship-question-emails-reveal?utm_source=npr_newsletter&utm_medium=email&utm_content=20180724&utm_campaign=breakingnews&utm_term=nprnews

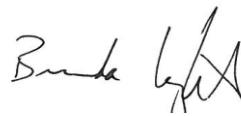
adding a citizenship question. To the contrary, enforcement of voting rights and other key civil rights laws will be dramatically undermined by adding a question to the census that is certain to drive down the response rates of communities that already feel under siege from the current Administration's constant vilification and targeting of immigrants.

In sum, adding a question on citizenship to the 2020 Census questionnaire will greatly decrease the response rate, and thus the accuracy, of the Census, will add greatly to the cost of the Census, and is entirely unnecessary for any legitimate purpose. Demos strongly urges the Commerce Department to require the removal of this question from the data collection forms.

Sincerely,



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**Admitted to practice law in Massachusetts; not admitted in the District of Columbia. Practice limited pursuant to D.C. App. R. 49(c)(3).*