



CONSORTIUM *of* SOCIAL SCIENCE ASSOCIATIONS

## Analysis of the Supreme Court Census Ruling in *Department of Commerce v. New York* | June 27, 2019

The [Supreme Court ruled this morning](#) that Commerce Secretary Wilbur Ross gave an inadequate explanation for his decision to add a question on citizenship to the 2020 Census, and that the question cannot be added to the Census until a better explanation is provided. Secretary Ross had argued that he decided to add the question in order to generate better data on citizenship that would assist the Department of Justice (DOJ) in enforcing the *Voting Rights Act* (VRA), though ample evidence from administrative records showed otherwise.

Chief Justice John Roberts, wrote for the majority:

*“Yet viewing the evidence as a whole, this Court shares the District Court’s conviction that the decision to reinstate a citizenship question cannot adequately be explained in terms of DOJ’s request for improved citizenship data to better enforce the VRA. Several points, taken together, reveal a significant mismatch between the Secretary’s decision and the rationale he provided. [ . . . ] Unlike a typical case in which an agency may have both stated and unstated reasons for a decision, here the VRA enforcement rationale—the sole stated reason—seems to have been contrived. The reasoned explanation requirement of administrative law is meant to ensure that agencies offer genuine justifications for important decisions, reasons that can be scrutinized by courts and the interested public. The explanation provided here was more of a distraction.”*

The complicated ruling leaves the door open for Secretary Ross to offer a different explanation that the Court could accept as legitimate, which would in theory allow the Department of Commerce to include the question on the 2020 Census. However, the narrowing timeline for printing questionnaires and other materials for the Census adds uncertainty about what will happen next. The Census Bureau has stated that it would like to begin printing materials on July 1, but [some reports](#) have suggested this deadline could be delayed—although there is no clear answer as to how long without adversely affecting the Census operation.

If the July 1 deadline is delayed, the Department of Commerce could conceivably issue an explanation for its inclusion of the question. The validity of this explanation would need to be accepted by the Southern District of New York (who heard the case initially), and that decision could be appealed again.

In addition, two cases before the Maryland District Court are proceeding along a separate track. In response to the discovery of documents connecting the addition of the citizenship question with the late Republican redistricting strategist Thomas Hofeller, the District judge [agreed to issue a new ruling](#) on whether the question violates the “equal protection” clause of the Constitution by discriminating against Hispanics (an issue not considered in the case the Supreme Court ruled on today). The timing of a decision on this case is unclear, but plaintiffs were given 45 days to gather new evidence earlier this week. Whatever ruling comes out of the District Court is also likely to be appealed.

Today’s ruling is a positive step for those of us who have been working to ensure a fair and accurate 2020 Census, but it also adds new layers of uncertainty to an operation that has been mired in controversy for over a year. We

are currently awaiting an announcement from the Commerce Department or the Census Bureau on whether they will stick to their self-imposed printing deadline of Monday July 1, which will give us a clearer indication of the practical impacts of today's ruling.

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