



MIKE HUNTER
ATTORNEY GENERAL

March 13, 2018

Secretary Wilbur Ross
United States Department of Commerce
1401 Constitution Ave. NW
Washington, D.C., 20233

Re: Request to Reinstate Citizenship Question on 2020 Census Questionnaire

Dear Secretary Ross,

As Attorneys General and Governors, we write requesting the Department of Commerce to reintroduce the question asking a person's citizenship in the long form questionnaire for the 2020 Census. Citizenship means something, and statistical information on the state of citizenship in our country is vital to the functioning of our democracy. The lack of reliable data on citizenship degrades each citizen's right to participate in free and fair elections. When legislators determine districts based on population and without access to accurate statistics on citizenship, the result is that legally eligible voters may have their voices diluted or distorted. Matters of such constitutional importance should not be unnecessarily imperiled when the solution is as simple as a question on a census form.

From 1970 until the 2010 Census, the Census Bureau provided this data by including a citizenship question on its "long form" questionnaire during each decennial census. Since this practice was discontinued in the 2010 Census, state officials have been denied access to equally reliable data. The decennial census is the best method to collect data about citizenship. It has significant advantages over the method currently used: the American Community Survey (ACS). The ACS, for example, draws data from a significantly smaller sample size: only 1 in every 38 households is selected to participate in the survey. This smaller sample size translates to larger margins of error. Moreover, the ACS data is not temporally consistent with decennial census data. Rather, ACS data is collected over time and only later aggregated into one-year and five-year estimates. These estimates do not align with the total and voting-age population data from the decennial census.

To comply with the Constitution's one-person, one-vote requirement, States use the total population data from the decennial census. *See Evenwel v. Abbott*, 136 S. Ct. 1120 (2016). In the absence of citizenship information derived from the decennial census, state officials must resort to using ACS citizenship estimates that do not match with the total population data provided by the Census. But the ACS data is inferior, because it lacks the scope and level of detail that the decennial census provides. And even if the data were equally accurate, the ACS data come from surveys conducted at different times than the decennial census data; thus, when legislators need to draw districts that incorporate different data from both surveys, the result contains internal inconsistencies because the data sets do not mesh. This unnecessarily complicates any constitutional analysis and deprives legislators, courts, and citizens of their confidence in the districting process.

Adding a citizenship question would also alleviate courts of significant litigation. Section 2 of the Voting Rights Act has been interpreted to mandate that redistricting cannot result in racial “vote dilution,” which occurs when a racial minority is improperly deprived of a single-member district in which it could form a majority with the ability to elect the candidate of their choice. *Thornburg v. Gingles*, 478 U.S. 30, 50 (1986). Courts have held that the proper metric for determining whether a racial group could constitute a majority in a single member district is the citizen voting-age population. *Reyes v. City of Farmers Branch*, 586 F.3d 1019, 1023-24 (5th Cir. 2009); *Barnett v. City of Chicago*, 141 F.3d 699, 704 (7th Cir. 1998); *Negron v. City of Miami Beach*, 113 F.3d 1563, 1567-69 (11th Cir. 1997); *Romero v. Pomona*, 883 F.2d 1418, 1426 (9th Cir. 1989), *overruled in part on other grounds by Townsend v. Holman Consulting Corp.*, 914 F.2d 1136 (9th Cir. 1990).

This is especially important for districts with minority groups that have a large non-citizen population, because in such districts good data is necessary to ensure that the *citizen* population is large enough to elect that minority group’s candidate of choice. But without access to accurate data, the States cannot obtain certainty about whether they comply with the Voting Rights Act’s requirements. The result is protracted litigation and the possibility that minority populations will be unable to elect the candidate of their choice. Finally, adding a citizenship question would improve the public policy of States and municipalities. Equitably distributing voting power will translate to more equitable policies that reflect the values of the local citizenry.

Citizenship still matters. It is a privilege that is important and meaningful, and not lightly ignored. Non-citizens can be valuable members of our community, but citizenship rightly confers benefits and responsibilities that must be taken seriously. Chief among them is the right to vote. Voting is the most precious right of every citizen—it provides the means to participate, to influence, and to articulate his concerns to the government. Including a simple question in the census will impose a minimal burden on the government and the residents surveyed, but this small step will have a significant and positive impact on the policies and constitution of our great republic. But failing to accurately account for our citizenry harms the rights of our citizens, perhaps especially our minority and immigrant citizens. In order to have accurate and usable data regarding voting-age citizens in the United States, we respectfully request that the 2020 Census include a question regarding citizenship.

Respectfully,



Mike Hunter
Attorney General of Oklahoma



Derek Schmidt
Attorney General of Kansas

Bill Schuette
Attorney General of Michigan

Curtis T. Hill
Attorney General of Indiana

Douglas J. Peterson
Attorney General of Nebraska

Alan Wilson
Attorney General of South Carolina

Leslie C. Rutledge
Attorney General of Arkansas

Christopher M. Carr
Attorney General of Georgia

Matthew C. Bevin
Governor of Kentucky

Herbert H. Slatery III
Attorney General of Tennessee

Phil Bryant
Governor of Mississippi

Pam Bondi
Attorney General of Florida

Patrick Morrisey
Attorney General of West Virginia