Supreme Court Hears Case Watched by Educators on Census' Citizenship Question

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The U.S. Supreme Court on Tuesday heard arguments over whether a citizenship question may be added to the 2020 census, in a case that is being watched by educators because of the potential impact that depressed response rates may have on the allocation of billions of dollars in federal education aid.

Liberal justices were skeptical of U.S. Secretary of Commerce Wilbur L. Ross Jr.'s reasons for adding the citizenship question.

"This is a solution in search of a problem," Justice Sonia Sotomayor told U.S. Solicitor General Noel J. Francisco, referring to the commerce secretary's rationale that the citizenship question was requested by the Department of Justice to help enforce the Voting Rights Act of 1965.

Justice Elena Kagan told Francisco that his briefs were well-written, but they provide "60 pages of rationalization" of Ross's decision that the secretary himself did not provide at the time he announced the decision a year ago.

"You can't really read this record without concluding this [voting-rights] need was a contrived one," Kagan said during the arguments in Department of Commerce v. New York (Case No. 18-966).

The justices are reviewing a ruling by a federal district judge who found that adding a citizenship question to the census would lead to a decline in the response rate of at least 5.8 percent of households with at least one noncitizen and would also likely result in an undercount of Hispanic households.

Conservative members of the court were understated but did not give much reason to suggest they were inclined to support the challengers. Several repeatedly pointed to the long history of the Census Bureau asking a citizenship question in various forms and the fact that many other countries ask about citizenship on their census forms.

"The United Nations recommends asking about citizenship," Justice Brett M. Kavanaugh told Barbara D. Underwood, the solicitor general of New York state, which joined 17 other states as well immigration groups in challenging Ross's decision as a violation of federal administrative law and the U.S. Constitution's enumeration clause.

Justice Neil M. Gorsuch asked how the court should weigh the fact that the census has asked about citizenship "for almost all of our history."
Almost every decennial census from 1820 through 1950 asked about citizenship. Since then, the Census Bureau has only included the question on long forms that went to a sample of the full population, or on the annual American Community Survey that also goes to a small segment of households.

The arguments did not delve into concerns raised in several friend-of-the-court briefs filed by education groups.

The Council of the Great City Schools, a coalition of 74 of the nation's largest urban districts, says in its brief in support of the challengers that a 5.8 percent undercount of households with one noncitizen would—by itself—result in a "misallocation" nationwide of $151.7 million in federal Title I compensatory education funds.

The National School Boards Association and other education groups said in a brief that some 5.9 million children live in a household with at least one undocumented parent, and that it is important to achieve the most accurate count possible on the decennial census.

A decision in the case is expected by late June, which is also the target date for the Census Bureau to finalize and begin printing forms for the 2020 count.