

EDUCATION WEEK

Supreme Court Sets Aside Plan to Add Citizenship Question to 2020 Census

By [Mark Walsh](#) on June 27, 2019 12:14 PM

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In a case being watched closely for its implications on school funding and other education issues, the U.S. Supreme Court on Thursday set aside for now the Trump administration's plan to include a question about citizenship on the 2020 Census, narrowly agreeing that the U.S. Secretary of Commerce Wilbur L. Ross Jr. had pretextual reasons to add the question.

[Education groups say](#) that adding the citizenship question could affect the allocation of billions of dollars in federal education aid to states and school districts, as well as how schools use census data in other ways such as to draw attendance lines.

The court ruled 5-4 in [Department of Commerce v. State of New York](#) (Case No. 18-966) that the secretary's rationale that the question was needed to better enforce the Voting Rights Act of 1965 "seems to have been contrived," as [Chief Justice John G. Roberts Jr. wrote](#).

"Several points, considered together, reveal a significant mismatch between the decision the secretary made and the rationale he provided," Roberts said for a majority that included Justices Ruth Bader Ginsburg, Stephen G. Breyer, Sonia Sotomayor, and Elena Kagan.

It remained unclear immediately after the decision whether the Trump administration could take steps to reinstate the question in time for it to be included next year.

The chief justice's reading of his opinion in the court was dramatic, as he began by indicating that he did not agree with challengers that adding a citizenship question

would violate the "enumeration clause" in Article I of the Constitution, or that Ross had violated the Administrative Procedure Act.

"From the beginning, the census was used for more than just counting the population," Roberts said.

Justices Clarence Thomas, Samuel A. Alito Jr., Neil M. Gorsuch, and Brett M. Kavanaugh largely joined those parts of the chief justice's decision, and wrote or joined dissents on the pretext ruling.

"For the first time ever, the court invalidates an agency action solely because it questions the sincerity of the agency's otherwise adequate rationale," Thomas wrote in a dissent joined by Gorsuch and Kavanaugh.

Alito wrote for himself that, "It is a sign of our time that the inclusion of a question about citizenship on the census has become a subject of bitter public controversy and has led to today's regrettable decision."

"While the decision to place such a question on the 2020 census questionnaire is attacked as racist, there is a broad international consensus that inquiring about citizenship on a census is not just appropriate but advisable," Alito said.

Billions in School Aid Involved

The decennial census is the foundation for allocation of billions of dollars of federal aid to states and localities, including for such education programs as the National School Lunch Program, for which census figures are used to help distribute some \$19 billion in annual aid; Title I compensatory education aid to school districts, at \$15.8 billion; grants to states under Part B of the Individuals with Disabilities Education Act, at \$12.3 billion; and the Head Start preschool program, at \$8.5 billion.

A federal district judge in January 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.

The Council of the Great City Schools, a coalition of 74 of the nation's largest urban districts, [said in a friend-of-the-court brief](#) in support of the challengers that a 5.8 percent undercount of households with one noncitizen would 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](#) opposed to the citizenship question 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.

U.S. Secretary of Commerce Wilbur L. Ross Jr. announced in March 2018 that he had decided to add the citizenship question in response to a request from the U.S. Department of Justice, which he said had urged the move to gain more "granular" data to better enforce the Voting Rights Act of 1965.

But legal challenges, brought by immigration groups and 18 states led by New York, turned up evidence that Ross had consulted the White House about the move and had decided to add the question well before the Justice Department made its request. Evidence also shows that Ross pushed ahead despite objections from Census Bureau experts. They had concluded that a citizenship question would depress response rates, increase costs, and result in lower-quality citizenship data than would be available by other means, such as the American Community Survey.

In January, a federal district judge in New York City ruled that Ross' move to add the citizenship question over the objections of Census Bureau staff members violated the Administrative Procedure Act because the secretary's rationale was pretextual and he acted in an arbitrary and capricious manner.

More recently, challengers had turned up what they said was new evidence that the administration's push for a citizenship question was a pretext. Some of the evidence was discovered in the files of a Republican redistricting specialist, Thomas Hofeller, who died last year.

Challengers allege that the evidence showed that the administration wanted to add the citizenship question to give an electoral advantage to whites and Republicans and not to improve enforcement of the Voting Rights Act of 1965, as the administration has argued.

The Supreme Court's opinions on Thursday, its last formal day of the 2018-19 term, did not address those late motions.

Kelly Laco, a spokesperson for the U.S. Department of Justice, said in a statement, "We are disappointed by the Supreme Court's decision today. The Department of Justice will continue to defend this administration's lawful exercises of executive power."

The U.S. Census Bureau issued a statement saying that the ruling "is being reviewed."

Dale Ho, the director of the Voting Rights Project of the American Civil Liberties Union, which represents some of the challengers to the citizenship question, said he would not expect the administration to try to come up with a new rationale for the question in time for the printing of census forms. The government has said it needs to do that by July 1.

"Given how many times they have represented that they need to start printing the forms next week, it would be the height of hypocrisy" if they sought a delay now to develop such a new rationale, Ho said. "I wouldn't put anything past them, though."

Michael Casserly, the executive director of the Council of the Great City Schools, said in a statement, "The court correctly decided today to block the administration from manipulating the U.S. Census, exacerbating the undercount of residents, and skewing the distribution of critical federal education aid."

Austin Buetner, the superintendent of the Los Angeles Unified School District, in a statement citing a potential loss of \$20 million in federal Title I funding if there were an undercount attributable to the citizenship question, said, "The Supreme Court's decision to not include the citizenship question in the 2020 Census is the right thing for public education."