

### Panel 3: 2020 Census / Citizenship Question

The Constitution requires an “actual Enumeration” of all persons in the United States every ten years. U.S. Const. art I, § 2. The results of that census dictate, among other things, Congressional redistricting.

Although a citizenship question has from time to time been on the census, it has not appeared on the census in 70 years. Last year, however, the Trump Administration declared its intent to add a citizenship question, claiming through its Commerce Secretary Wilbur Ross (who directs the Census Bureau) that doing so would help the Administration protect the rights of minorities under the Voting Rights Act. Opponents argued that this was a pretext, and that the Administration’s actual motivation was to produce an undercount resulting from undocumented individuals and others who live with them being afraid to participate. According to the Administration’s own “conservative” estimate, approximately 6.5 million people would decline to participate in the census due to the addition of the citizenship question. This undercount, in turn, would favor the Republican Party in Congressional redistricting, and result in a significant decrease in federal funding for health care, education, housing, and other critical services to states with significant immigrant populations.

After a lengthy legal battle over the legitimacy of a citizenship question in the 2020 census, the United States Supreme Court issued its 5-4 decision in Department of Commerce v. New York on June 27, 2019. Writing for the majority, Chief Justice John Roberts joined the four liberal justices in concluding that while the Commerce Secretary generally has the discretionary authority to include such a question, circumstances in this case suggested that the reason offered by the Trump Administration for adding the question appeared to be “contrived.”

Although not explicitly referenced by the Court, those “circumstances” include the discovery and public release—after oral argument—of Republican redistricting strategist Thomas Hofeller’s electronic documents, indicating a very different motivation for adding a citizenship question: it would provide information allowing maps to be drawn based on a state’s voting-age citizens, rather than on its total population, which would be “advantageous to Republicans and Non-Hispanic whites.”

Shortly after the Supreme Court decision, the Trump Administration vowed to continue to fight for the addition of the citizenship question on the census, but then quickly reversed itself.

Did the Supreme Court correctly decide Department of Commerce v. New York? Further, will all of the attention given to the issue of a citizenship question on the 2020 census— notwithstanding that decision—result in an undercount?