

U.S.

# Cities and States Mount Court Challenge to Census Question on Citizenship

By MICHAEL WINES APRIL 3, 2018

WASHINGTON — A largely Democratic coalition of 17 state attorneys general and seven cities filed a lawsuit Tuesday to block the Trump administration from asking respondents to the 2020 census whether they are citizens, opening a constitutional battle that some experts believe is destined to be settled by the Supreme Court.

In the lawsuit, filed in United States District Court in New York, the officials argued that adding the citizenship question would depress the response to the census by noncitizens and their relatives, thwarting the Constitution's requirement of an "actual enumeration" of the nation's residents. The suit also claimed that the decision violated federal administrative law and a law setting standards for data quality.

At a news conference announcing the suit, officials and House members representing some of the plaintiff states accused the White House of seeking to destroy the census's bipartisan tradition for political gain.

"This is a brazen attempt by the Trump administration to cheat on the census, to undermine the accuracy of the census and to attack states that have large immigrant

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The decennial count of United States residents, which the Constitution mandates to include both citizens and noncitizens, is used to apportion House seats among the states and to redraw both local and state political boundaries. The head count also determines the allocation of hundreds of billions of dollars in federal grants and subsidies.

Seventeen Democratic state attorneys general and seven cities joined the lawsuit, as well as the United States Conference of Mayors, which represents 1,400 cities with both Republican and Democratic leaders. Among the cities was Providence, R.I., where the only full dress rehearsal of the 2020 census is currently underway.

The decision to add a citizenship question to the census, announced March 26 by Commerce Secretary Wilbur L. Ross Jr., came too late for the question to be included in the Providence trial.

A prolonged legal battle over the issue could complicate preparations for the 2020 count. Census officials said last week that they hope to begin finalizing plans for the census this autumn, and delays in printing — not just census forms, but material to train workers who will ask questions, and public information brochures — could drive up costs.

Courts “usually have been respectful of these sorts of deadlines,” said Robert M. Groves, the provost at Georgetown University and a director of the census during the Obama administration. “To the unschooled observer, a census seems like it just can’t be that complicated. But there are certain things you just can’t postpone.”

In adding the question to the census, Mr. Ross bypassed the years of testing and evaluation given all other questions, stating that there was only limited evidence that asking respondents whether they were citizens would keep people from participating. But the lawsuit noted that both the Census Bureau and all its living former directors had repeatedly warned since 1980, in lawsuits and congressional testimony, that questioning residents about their immigration status or citizenship would “inevitably jeopardize the overall accuracy of the population count.”

“Those concerns have been amplified by the anti-immigrant policies, actions and rhetoric targeting immigrant communities from President Trump and this

administration,” the lawsuit stated.

The suit also argued that the administration’s stated reason for gathering citizenship information — to better enforce the 1965 Voting Rights Act — was specious, noting that Trump re-election campaign materials stated that the president “officially mandated” the inclusion of the question.

The filing also claims that by skirting requirements to test the citizenship question, and offering no valid reason for its addition, the Commerce Department violated the Administrative Procedure Act and the Information Quality Act, also known as the Data Quality Act.

The procedure act prohibits actions by federal agencies that are arbitrary, capricious or an abuse of discretion. The Information Quality Act requires agencies to set testing and evaluation requirements that result in accurate and reliable data and high response rates by citizens participating in surveys.

***Correction: April 4, 2018***

An earlier version of this article misattributed a quotation criticizing the Trump administration’s action on the 2020 census. It was Representative Jerrold Nadler, Democrat of New York, who called the move “a brazen attempt by the Trump administration to cheat on the census,” not Ellen F. Rosenblum, Oregon’s attorney general.

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