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San Francisco joins suit to fight Trump administration over census citizenship question

By **Bob Egelko** Updated 7:25 pm, Tuesday, April 3, 2018

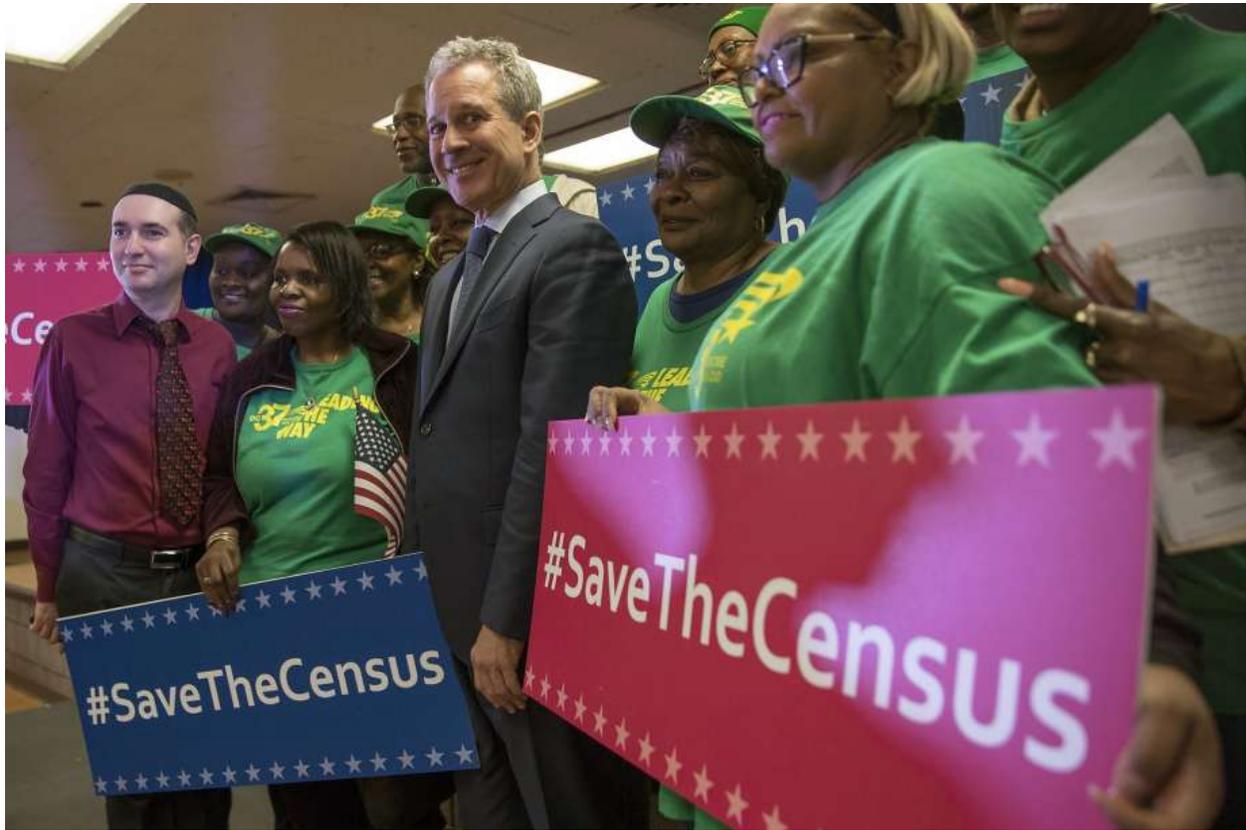


IMAGE 1 OF 4

New York Attorney General Eric Schneiderman poses for a photo with members of District Council 37 after a news conference, Tuesday, April 3, 2018, in New York. Schneiderman announced a new ... [more](#)

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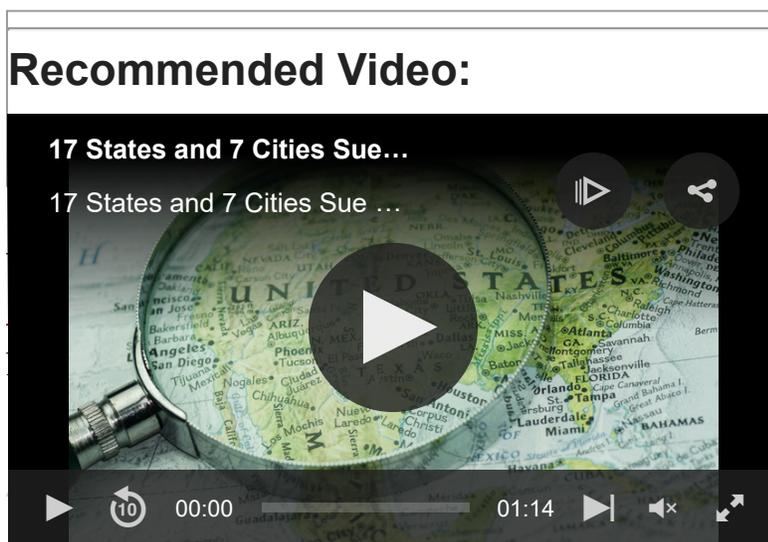
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The Trump administration's plan to add a question about U.S. citizenship to the 2020 census drew an immediate legal challenge from California. Now a group of states and cities, including San Francisco, has gone a step further with bipartisan findings from census directors for more than four decades that show a citizenship question would reduce participation in the once-per-decade survey and undermine its accuracy.

The Census Bureau has declared publicly since at least 1980 that citizenship inquiries “are particularly sensitive in immigrant communities” and that adding a citizenship question to the census “would drive down participation rates,” the states and cities said in a lawsuit filed Tuesday in U.S. District court in New York.

Their lawsuit cited a bureau filing to the Supreme Court to that effect in 1980, under President Jimmy Carter; congressional testimony in 1988 and 1989 under Presidents Ronald Reagan and George H.W. Bush, and later by President Bill Clinton’s census director; testimony in 2009 by all eight former census directors since 1979, and another filing to the Supreme Court in 2016 by four former directors, who noted “increased suspicion of government collection of information,” especially “among noncitizens.”

And when President Trump’s commerce secretary, Wilbur Ross, announced last week the proposed inclusion of the citizenship question in the next census just days before a legal deadline, the suit noted, he was overruling officials in his own Census Bureau as well as the bureau’s expert advisory committee.



Tuesday’s suit was filed by 17 states, led by New York, along with six cities, the District of Columbia and the National Conference of Mayors. It added **suit filed by California** court in San Francisco on March 26,

By referring to the past declarations from census officials of both parties, the new suit sought to minimize partisan overtones of a case potentially headed for the Supreme Court, with a majority of Republican-appointed justices. The issue itself has strongly partisan overtones — low census counts in states with large immigrant populations, mostly

Democratic, would result in a reduced number of U.S. House seats and Electoral College votes, as well as reductions in their share of hundreds of billions of dollars in federal funds.

“Low-income families across the country rely on accurate census counts for federal assistance,” San Francisco City Attorney Dennis Herrera said in a statement accompanying the suit. “The Trump administration is playing politics with people’s lives.”

The suit said 35 percent of San Francisco’s residents are immigrants, including an estimated 240,000 who are undocumented, and that 22.3 percent of the city’s households did not mail back their census surveys in 2010, forcing the Census Bureau to conduct followup visits.

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Ross said he was acting at the request of Attorney General Jeff Sessions’ Justice Department, which said a citizenship count was needed to determine the number of eligible voters in each district and enhance opportunities for minorities to elect one of their own in each House district as required under the Voting Rights Act. The Justice Department made a similar assertion Tuesday.

“Since 1965, every Census, with the exception of the one administered in 2010, has contained a citizenship question used by the Department of Justice to protect voters against racial discrimination,” the department said in a statement that was demonstrably false — the question was last contained in the census in 1950 and currently is included in the American Community Survey, sent by the Census Bureau to a sampling of 3.5 million households.

Nonetheless, the Justice Department added, the smaller survey “is not the most appropriate data to use as a basis for redistricting.” Reinstating the citizenship question in the census administered to all households “will allow the department to protect the right to vote and ensure free and fair elections for all Americans,” the statement concluded.

As opponents of the citizenship question have noted, President Trump's Justice Department has taken steps to weaken the Voting Rights Act by supporting state voter ID laws. The lawsuit also contended that a citizenship question would "undermine, not advance, the goals of the Voting Rights Act" by leading to lower census counts, and reduced congressional representation, in many minority communities.

The Trump administration's immigration policies have heightened fears among noncitizens, the suit said. It cited the June 2017 congressional testimony of Thomas Homan, acting director of Immigration and Customs Enforcement, who advised undocumented immigrants, "You should look over your shoulder. And you need to be worried."

Like California's lawsuit, the suit by the states and cities argued that a citizenship question would lead to an "undercount" that would violate the government's duty, under the Constitution, to provide an "actual enumeration" of the entire U.S. population, regardless of citizenship status, every 10 years.

In addition, the new suit cited a federal law, the Information Quality Act, whose guidelines direct the Census Bureau to test new questions well in advance before adding them to the census.

The bureau has been conducting tests for the next census since 2015, but has not included a citizenship question in any of them, the suit said — even in a so-called "dress rehearsal" that was launched on Sunday. And even Ross, in a recent memo justifying the added question, acknowledged that he could not "determine definitively" how the question would affect "responsiveness."

Adding a citizenship question without testing its effects would violate the information law, the suit said, and would also be illegal "because it reverses nearly seven decades of settled and well-considered practice without reasoned explanation."

The new legal argument is a potentially strong one, said Bill Hing, an immigration law professor at the University of San Francisco.

"Generally, when the census tries something new, it tests for its effects before deciding to roll it out," he said.

Bob Egelko is a San Francisco Chronicle staff writer. Email: beigelko@sfchronicle.com

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