

2020 Census

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TL;DR

In March 2018 US Secretary of Commerce Wilbur Ross [announced](#) the 2020 Census was to include a question on citizenship status—a question that has not appeared on the decennial census [since 1950](#). The Trump Administration has [asserted](#) the citizenship question is necessary to enforce the Voting Rights Act and prevent voter fraud. However, many have viewed the inclusion of this question as targeting immigrants, and several groups and state Attorneys General [sued](#) to prevent the question from appearing on the census. The lawsuits argue the citizenship question would decrease the census' accuracy and dissuade vulnerable populations from responding. On January 15, a US District Court Judge [ruled](#) the citizenship question unconstitutional. The Supreme Court has granted the Trump Administration's request to consider the constitutionality of adding the citizenship question on the 2020 Census—the [hearing](#) will be held on April 23. In addition to the uncertainty caused by the citizenship question, the 2020 Census will be the first census to provide for and allow [online submissions](#), and to date, the Census Bureau has [failed](#) to carry out its original testing plans and preparation.

The census impacts the allocation of government resources and representation. The citizenship question coupled with inadequately tested online census technology may lead to an inaccurate count of the population, which in turn will lead to a misallocation of resources and incorrect level of representation. In light of this, New York State has increased funding for census outreach efforts and is taking steps to ensure an accurate count.

Historical Background

The United States Census is mandated by [Article I, Section 2 of the Constitution](#) which states, "[e]numeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct" and governed by [Title 13 of the United States Code](#).

The [primary goal](#) of the census is to accurately determine and record the population and its distribution. Census results are [used](#) in allocating government resources, distributing federal funding (for areas such as health care, education, and transportation), redistricting, and providing each state with proportional representation in the U.S. House of Representatives. When the [first census was conducted in 1790](#), Marshals of U.S. judicial districts were responsible for its administration, and the census inquiry was limited to the name of the head of family and number

of persons in each household divided by categories: free white males 16 and over, free white males under 16, free white females, all other free persons, and slaves. The census differentiated slaves from all other free persons in accordance with the [Three-Fifths Compromise](#), which sought to count slaves as three-fifths of a free person for purposes of Representatives and taxes. In 1868, the [Fourteenth Amendment](#), which concerns the rights of citizens and provides equal protection of the law, superseded the Compromise. The Fourteenth Amendment eliminated the Compromise by only requiring that “[r]epresentatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed.”

In [1902, the U.S. Census Bureau was first established under the Department of Commerce](#) with a primary responsibility of administering the census. The Secretary of Commerce was granted authorization by Congress to [“obtain...census information as necessary”](#) with his or her discretion reviewable by the judiciary.

Since its enactment, the [census has undergone many changes](#) including the questions asked and method of administration. It is important to note, census changes are reflective of the relationship between the government and its citizens, views on identity and race, and the broader social milieu.

2020 Census: Litigation

In March 2018 Secretary of Commerce Wilbur Ross [announced](#) the 2020 Census was to ask: “Is this person a citizen of the United States?” While U.S. citizenship questions have previously appeared on decennial censuses, households have not been required to answer questions about U.S. citizenship [since the 1950 Census](#). The citizenship question would be a requirement on the 2020 Census. According to Secretary Ross, the policy change was the result of a U.S. Justice Department request and interpretation of the citizenship question as necessary for the enforcement of Section 2 of the Voting Rights Act, which prohibits discriminatory voting practices and procedures. Despite this claim, the Justice Department—during the Trump administration—has not filed a single case to enforce the Voting Rights Act.

The introduction of the citizenship question to the 2020 Census has been widely criticized, especially since it has come against the backdrop of other Administration policies largely perceived to be anti-immigrant. Many states, cities, and advocacy groups have asserted the question will lead to inaccurate results and an undercount of the population, specifically of historically hard-to-count communities. [Seven lawsuits have been filed](#) throughout the country challenging the legality of the census citizenship question.

On January 15, 2019, U.S. District Judge Jesse Furman for the Southern District of New York [ruled](#) against the Trump Administration’s decision to add the U.S. citizenship question to the 2020 Census

(New York v. United States Dep't of Commerce; New York Immigration Coal. v. United States Dep't of Commerce).¹ Judge Furman found that Secretary Ross exceeded his authority by adding the citizenship question, in violation of the Administrative Procedure Act. Further, Judge Furman noted that Secretary Ross' "intent and credibility are directly at issue in these cases." During the trial, John Gore, the former assistant attorney general for civil rights in the Justice Department, stated that he was unaware of any voting rights case in which the Justice Department failed due to a lack of citizenship data on the census.

On March 6, 2019, U.S. District Judge Richard Seeborg for the Northern District of California also [ruled](#) against Secretary Ross' decision to add the citizenship question to the 2020 Census (California v. Ross; City of San Jose v. Ross). Judge Seeborg found that the citizenship question is unconstitutional as it violates the Enumeration Clause, which requires actual enumeration of all of the people in each state every ten years and prohibits the Secretary of Commerce from affirmatively interfering with such actual enumeration without serving a governmental purpose. Further, Judge Seeborg found the citizenship question introduction violates the Administrative Procedure Act, which requires that an administrative agency's actions not be arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with the law.

On April 5, 2019, U.S. District Judge George J. Hazel for the District of Maryland [ordered for the removal](#) of the citizenship question by the Department of Commerce (Kravitz v. United States Dep't of Commerce; La Union Del Pubelo Entero v. Ross). Judge Hazel found the citizenship question unconstitutional as it violates the Enumeration Clause. Further, Judge Hazel found the question violates the Administrative Procedure Act.

On February 8, 2019, U.S. District Judge Dabney L. Friedrich for the District of Columbia [denied a motion](#) for preliminary injunction which would have enjoined the Department of Commerce from including the citizenship question on the census (Electronic Privacy Information Center v. United States Dep't of Commerce).

Besides these legal challenges, the House Committee on Oversight and Reform held an oversight hearing on the 2020 Census in March, during which Secretary Ross testified. During the testimony, Secretary Ross defended the decision to incorporate the citizenship question in the 2020 census.

The Supreme Court has granted the Department of Commerce's request to consider the constitutionality of adding the citizenship question on the 2020 Census, effectively bypassing the court of appeals for an immediate review of the S.D.N.Y. ruling (New York v. United States Dep't of Commerce; New York Immigration Coal v. United States Dep't of Commerce). The Supreme Court hearing will be held on April 23.² In order for the census questionnaire to be printed and distributed on time, the [census questions must be finalized by the end of June 2019](#).

¹ NOTE: Tech:NYC submitted an [amicus brief](#) in support of the plaintiffs.

² NOTE: Tech:NYC submitted an [amicus brief](#) in this case.

2020 Census: Online

Due to the budget uncertainty and constraints, the Census Bureau has not completed planned testing in the run up to the 2020 Census. The [federal government cancelled planned field testing in 2017](#), intended to occur Puerto Rico, the Standing Rock Reservation in North and South Dakota, and the Colville Reservation and Off-Reservation Trust Land in Washington. The federal government did not carry out its [planned](#) 2018 End-to-End Census Test, which was scheduled to take place in Bluefield-Beckley-Oak Hill, West Virginia and Pierce County, Washington. The 2018 Census Test Address Canvassing [was conducted in all three sites](#), while the 2018 Census Test Enumeration Phrase only took place in Providence Country, Rhode Island.

Despite the lack of robust testing, the 2020 Census is still on track to incorporate online technology. Introducing online census capability—without proper planning—is likely to result in a further undercounting of historically hard-to-count populations who may not have access to the Internet and may be more at-risk for privacy and cybersecurity issues than non-Internet alternatives. In response, [libraries have been working relentlessly](#) to prepare and provide infrastructure for individuals to complete their census questionnaires. These groups are simultaneously working to increase awareness and incentivize people to use publicly available resources.

Libraries work with the Census Bureau in order to ensure an accurate population count. For the 2010 Census, libraries hosted [over 6,000](#) official Census Bureau outreach sites and community events. There are over 120,000 public libraries throughout the country, that provide physical space for outreach efforts, access to free high-speed internet and devices, digital literacy instructions, and trained personnel to provide assistance and ensure data privacy. The Graduate Center of the City University of New York has [estimated](#) that a public library is located within five miles of 99% of hard-to-count individuals and within one mile of 79% of hard-to-count individuals.

The American Library Association has created a [2020 Census Library Outreach and Education Task Force](#) primarily to advise the ALA about “conducting research and education to inform library staff about potential impacts—particularly for public libraries—that may arise from the 2020 Census, gathering information from library colleagues about expected impacts and needs, and collaborating with the Census Bureau and other decision makers to best meet the needs of libraries and support an accurate Census.” One particular Census outreach role that New York public libraries are taking on is helping job applicants find Census-affiliated job opportunities, such as [field representatives](#) and [outreach specialists](#) to work with local community groups and office jobs in local and regional offices. For example, the Bronx Library Center has [helped](#) a community member apply for a supervisor position.

2020 Census: Issues

One of the biggest concerns is undercounting the population, which is a perpetual census concern. Specifically, certain [hard-to-count populations](#) have historically been inaccurately represented in census results, including, but not limited to, racial and ethnic minorities, individuals who do not speak fluent English, the homeless, undocumented immigrants, and LGBTQ individuals. Particular individuals or populations may be undercounted due to fear that their information will not remain confidential or due to difficulty in completing and submitting the census.

Though the [confidentiality of the census](#) and [72-year limit](#) on releasing information specific to individual respondents may decrease undercounting to some degree, these stipulations do not fully eliminate the issue of undercounting. Fears about confidentiality have plagued census participation for many decades and is best addressed by considering the ways in which questions are asked on the census itself.

The two major changes to the 2020 Census are both likely to contribute to an undercounting of the population. The citizenship question threatens an accurate count of the population as it may disproportionately induce fear about confidentiality for particular groups such as naturalized citizens and immigrants. The citizenship question is particularly potent in our current political climate where the Trump Administration's anti-immigration agenda may stoke people's mistrust of the fact that their personal, private information provided on the census will remain anonymous and not be used against them. In fact, researchers at the [Census Bureau released a memorandum in 2017](#) stating that there was a "recent increase in respondents spontaneously expressing concerns about confidentiality" during 2017 pre-testing studies. The online census technology may similarly decrease population count accuracy as fear that personal information will be compromised increases and technological obstacles are placed in front of those individuals who have historically been considered hard-to-count.

2020 Census: New York Outreach

Census outreach efforts span federal, state, city, and local municipalities. As part of the effort to increase census participation, New York municipal jurisdictions are being asked to participate in the [Local Update of Census Addresses](#) (LUCA), which is necessary to update the Census Bureau's residential address list before the 2020 Census. As discussed above, New York has joined several states in litigation regarding the census citizenship question as it ["could undermine tested, science-based efforts to achieve an accurate count."](#)

New York City has been particularly concerned with census outreach. Mayor Bill de Blasio appointed Julie Menin to Director of the Census and Executive Assistant Corporation Counsel for Strategic

Advocacy for the New York City 2020 Census outreach efforts. Menin [noted](#) that “it has never been more important to fight the threats to democracy and immigration that our city faces. We will leave no stone unturned to ensure that every New Yorker is counted so our city receives the billions in funding it deserves for public schools, health care, child care, senior centers, and infrastructure.” The de Blasio Administration [allocated approximately \\$4.3 million](#) to implement a citywide public awareness campaign for the 2020 Census. This is the first time that New York City has formally budgeted for census outreach efforts.

Many states have begun taking various measures in order to prepare for the 2020 Census and increase its accuracy and fairness. These [measures](#) include state legislation enacting Complete Count Committees, governor executive orders, and legislation to fund and support census efforts. [New York has enacted a law](#) which establishes a New York State Complete Count Commission for the 2020 Census, provides for the Commission’s powers and duties, requires the Commission to identify reasons for the 2010 Census undercount, and makes recommendations for an accurate census count in 2020.

In February 2019, nonprofit groups and unions wrote [a letter](#) to Governor Andrew Cuomo requesting \$40 million from the state budget be allocated to 2020 Census outreach programs led by community-based groups. The \$40 million request is based on a calculation done by the Fiscal Policy Institute (FPI) to ensure maximum participation in the 2020 Census, especially in relation to hard-to-count communities. The FPI found that this community-based group funding is necessary, as well as the state’s funding for its own outreach and local governments. When the New York State budget was finalized, there was \$20 million allocated for census outreach.

New York State is also [working with the Census Bureau](#) to provide training and technical assistance for local communities including: Cornell University’s Program on Applied Demographics is providing tools, training, and technical support; New York State Data Center technical assistance website is offering resources; the Council on Children and Families is providing information regarding training sessions, webinars, and student interns.

New York should be particularly interested in optimizing accurate results and reporting of hard-to-count populations as [New York may be at risk for losing congressional seats](#) if census population trends continue.

Impact on Members

An inaccurate census could negatively impact New York and businesses located here. Tech:NYC members have an interest in ensuring that our surrounding communities are vibrant and have access to the appropriate level of resources. As discussed, the government utilizes census data to allocate funding for schools, healthcare and roads. When Congress decides to allocate funding to states, it inquires whether the resources already available are sufficient based on the population. Undercounted communities will inevitably receive inadequate resources. In fiscal year 2008, over \$446 billion worth of federal funding was distributed to [215 federal assistance programs](#) and over \$419 billion of such federal funding was derived from census results— meaning that 75% of all federal funding was allocated based on census data.

Additionally, in the event of an undercount, New Yorkers may be negatively impacted by decreased political representation. Areas that are immigrant-heavy—like New York—could suffer representation issues if the population is undercounted. Tech:NYC and the broader tech community [work to ensure New Yorkers are able to exercise their democratic rights](#), and the loss of a Congressional seat would be a blow to democracy in New York.

The Census is also important to the operations of many businesses, who [base decision-making](#) on census data. Businesses of all sizes utilize census data for product development, marketing, product placement, and when determining where to open new business operations. Certain businesses are also eligible for federal funding and inaccurate census data may jeopardize this funding. The impact of inaccurate census data on businesses is likely to increase as our modern society continues to become more reliant upon and driven by data.