

SCOTUS Opinion: Court Blocks The Citizenship Question From The 2020 Census Questionnaire For Now

27 Jun 2019

The Constitution requires a census to be taken every 10 years, and Congress delegated that task to the Secretary of Commerce. In 2018, the Secretary announced that he would reinstate a citizenship question on the 2020 census questionnaire, a question that had been included in almost every census up through 2000. Opposition to the question claimed that the question would cause non-citizens to underreport, thus affecting the results. Two lawsuits were filed, one by various States and municipal entities, arguing that the question violated the [Enumeration Clause](#) and the [Administrative Procedure Act](#), the other by private organizations arguing the question violated Equal Protection guarantees under the [Fourteenth Amendment](#). The district court ruled that the Secretary's action was arbitrary and capricious, and based on a pretextual rationale, and struck the question, though it found no equal protection violation. The Court, in a fractured decision by Chief Justice Roberts, found as follows: (1) the challengers had standing to sue, (2) the Enumeration Clause permitted the citizenship question, (3) the Secretary's decision was reviewable under the Act and was supported by the evidence, however (4) the Secretary's explanation for his action was pretextual, and did not match with the agency's priorities and decisionmaking process, and thus remanded the matter to the agency for a proper explanation instead of a "distraction." The Secretary must come up with a new explanation that is not contrived for the question to go on the 2020 census forms, and the Secretary has noted that the forms must be finalized by the end of June. Justice Thomas, joined by Justices Gorsuch and Kavanaugh, concurred in part and dissented in part, arguing that since there was a legal and evidentiary basis for the question, the question should have been permitted, and the Court should not have assumed the Secretary was misrepresenting his views. Justice Breyer, joined by Justices Ginsburg, Sotomayor, and Kagan, concurred in part and dissented in part, agreeing that the Secretary's reason for the question was pretextual, but arguing that it also violated the Act as an arbitrary and capricious act. Justice Alito, also concurring in part and dissenting in part, argued that the "regrettable" decision was wrong for reviewing the Secretary's decision under the Act, and the question should have been allowed. A link to the opinion in *Department of Commerce v. New York* is [here](#).

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