



OPPOSE HAGERTY AMENDMENT 1393 TO THE SECURITY SUPPLEMENTAL

February 2024

Purpose: To require a citizenship question on the decennial census, to require reporting on certain census statistics, and to modify apportionment of Representatives to be based on United States citizens instead of all persons.

1. The apportionment provision proposes an unconstitutional purpose.

The Hagerty Amendment (Amendment 1393) would require the U.S. Census Bureau to exclude persons who are non-citizens in the United States from the state population totals used to apportion seats in the U.S. House of Representatives after each census.

Senators should reject the Hagerty amendment because it seeks to achieve a *clearly unconstitutional purpose*. The debate over this provision has nothing to do with border security or immigration policy. It is a simple question of constitutionality.

- *The plain meaning of the 14th Amendment to the Constitution could not be clearer:* Apportionment of seats in the House of Representatives is based on a count of “the whole number of persons in each State,” regardless of citizenship or immigration status. And that is how the nation has allocated House seats among the states since ratification in 1868. Congress rejected basing apportionment on the number of citizens only when debating the 14th Amendment. Passage of a simple bill cannot change the current constitutional text.
- **Republican and Democratic administrations alike** have concluded that excluding non-citizens from the apportionment counts would be **unconstitutional**.
- A 2010 CRS report concluded, “The term “whole number of persons” appears broad enough to include all individuals, regardless of citizenship status, and thus would appear to require the entire population be included in the apportionment calculation. *[A] constitutional amendment ... would likely be necessary in order to exclude any individuals from the census count for the purpose of apportioning House seats.*” (emphasis added)
- When asked to weigh in on a related question in *Evenwel v. Abbott* (578 U.S. _____. 136 S.Ct. 1120 (2016)), a case about state legislative redistricting, a **unanimous Supreme Court** noted that the 14th Amendment contemplates that “representatives serve all residents, not just those eligible to vote,” and that seminal cases setting forth the one-person, one-vote principle (e.g. *Wesberry v. Sanders* (376 U.S. 1); *Reynolds v. Sims* (377 U.S. 533)) confirmed a total-population basis for representational equality in the U.S. House of Representatives.
- The 14th Amendment was enacted, in part, to repeal the provision in Article I that counted enslaved people as only three-fifths of a person for apportionment purposes. The Hagerty proposal evokes this shameful legacy.



2. Collection of data on immigration status would undermine census accuracy everywhere.

Separate from the constitutional infirmity of Hagerty Amendment 1393, the Census Bureau cannot reliably determine the immigration status, including the number of non-citizens in each state, without destroying the chance for an accurate census in every state and every community.

- Census data guide the allocation of \$2.8 trillion annually in federal assistance to states, localities, individuals, and families for a range of vital services. An inaccurate census will skew the fair distribution of federal resources for the next decade and deprive cities and towns of their fair share of federal support.
- There is no precedent for trying to determine, through a universal survey, whether residents are living in the United States unlawfully. The likelihood of collecting reliable responses is remote, at best, and will deter many immigrants, no matter their immigration or citizenship status, from answering the census at all. That includes non-citizen parents whose children are citizens.
- Many non-citizen immigrants who are lawfully in the United States seeking asylum or are refugees might avoid the census because of uncertainty over their status and fear of law enforcement action based on their responses.
- Extensive Census Bureau research last decade showed that many residents believe the agency shares personal responses with other federal agencies or that their responses could be used against them, a concern that clearly would prevent people from answering a question on citizenship and/or immigration status, or answering the census at all.
- There are no reliable administrative record datasets that identify undocumented immigrants and their usual residence as of April 1 of a census year. (Immigrants who have applied for asylum are not in the United States unlawfully.)
- The U.S. Constitution requires an “actual enumeration” to determine the number of people in each state for purposes of congressional apportionment. The Census Act (13 U.S.C. §195) prohibits “sampling” methods for apportionment as well. Therefore, estimates of non-citizens residing in each state, in order to exclude them from the apportionment base, would not be a permissible method for implementing the Hagerty amendment.