

SAVE THE 2030 CENSUS and RESPECT THE CONSTITUTION VOTE “NO” ON H.R. 7109, The “Equal Representation Act”

Background: H.R. 7109, sponsored by Rep. Chuck Edwards (R. N.C.), would require the Census Bureau to ask about citizenship and immigration status in the decennial census, and it would narrow the 14th Amendment’s requirement to apportion seats in the House based on the number of “persons” living in the United States to include only U.S. “citizens” — a choice Congress explicitly rejected when debating and then adopting the amendment in 1866.

Summary: H.R. 7109 has two primary purposes, which would undermine an accurate census in every community and violate the Constitution’s equal representation clause, according to both Republican and Democratic administrations.

- The bill requires a census question on citizenship and immigration status (including whether a person is living in the United States without proper documents). This unnecessary question would undermine accuracy in all communities.
 - The Census Bureau already collects citizenship data through the ongoing American Community Survey (ACS).
 - Testing has shown that such a citizenship question on the decennial census would depress response, and an immigration status question would surely create fear and increase nonresponse among mixed-status households that include millions of citizens (especially children) and documented residents.
 - **Asking residents about their immigration status would undermine census accuracy everywhere, including resulting in undercounts of citizens living in mixed-status households, such as many children who are citizens.**
- **Lawmakers should reject H.R. 7109 because it seeks to achieve a clearly unconstitutional purpose in limiting apportionment counts to citizens only.** The debate over this provision has nothing to do with border security or immigration policy. It is a question of constitutionality.
 - This effort is directly contrary to the 14th Amendment to the U.S. Constitution, which requires the apportionment of House seats based on a count of “the whole number of persons in each State,” regardless of citizenship or immigration status.
 - Denying representation to all “persons” seeks to erase and undo the historic democratic purpose of the 14th Amendment.
 - This would mean, for example, that members of the armed forces who are non-citizens would be denied representation in the House of Representatives.
 - Amending the Constitution requires a joint resolution approved by two-thirds of each chamber and ratified by three-fourths of the states – not a simple bill.
 - The bill’s sponsors seem to understand that their goal is unconstitutional given that they added a severability clause.

The Census Bureau cannot reliably determine immigration status of every resident — including the number of noncitizens, documented people, and undocumented people in each state, as the bill requires — without destroying the chance for an accurate census in every state and 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, likely unprecedented, will skew the fair distribution of federal resources for the next decade and deprive cities and towns of needed resources for roads and transit systems, school, hospitals, veterans’ care, disaster preparation, and many other important quality-of-life services.

HOW DO WE KNOW IT IS A COUNT OF ALL “PERSONS”?

- Congress rejected basing apportionment on the number of citizens only when debating the 14th Amendment.
- A 2010 Congressional Research Service 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)
- In 2016, 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. H.R. 7109 evokes this shameful legacy and represents an attempt to re-write history.