

Oppose Section 556 of the House CJS Bill and Protect the Census

Section 556 of the House FY 2026 Commerce, Justice, and Science (CJS) appropriations bill would require the U.S. Census Bureau to exclude persons who are unlawfully in the United States from the state population totals used to apportion seats in the House of Representatives after each census.

The House should reject section 556 because it seeks to achieve a *clearly anti-constitutional purpose*. This provision has nothing to do with border security or immigration policy. The Constitution *requires* a count of every person living in the U.S. on Census Day for apportionment and representation purposes.

- *The plain meaning of the 14th Amendment to the Constitution could not be more clear:* the 14th Amendment states that 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.
- [Republican and Democratic administrations alike](#) have concluded that excluding undocumented immigrants (or all non-citizens) from the apportionment counts would be unconstitutional. Section 556 seeks to circumvent the constitutional amendment process required to achieve such a change.
- 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.”
- 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 text in Article I that counted slaves as only three-fifths of a person for apportionment purposes. Section 556 evokes this shameful legacy of denying the humanity of certain groups of people.

The Census Bureau cannot reliably determine the number of undocumented immigrants in each state without destroying the chance for an accurate census in every state and every community. Even posing a question on citizenship to every person in every household would cause census responses to [decline](#), rendering the survey inaccurate.

MORE ABOUT THE CENSUS

- The U.S. Constitution requires an “actual enumeration” to determine the number of people in each state for purposes of congressional apportionment, and the Census Act (13 U.S.C. §195) prohibits “sampling” methods for apportionment. Therefore, estimates of persons residing in each state in violation of U.S. laws, in order to exclude them from the apportionment base, would not be a permissible method for implementing section 556.
- As of 2021, census data guided the allocation of \$2.8 trillion annually in federal assistance to states, localities, individuals, and families for a range of vital services, including disaster preparation and response, health care and hospitals, rural community development, road and transit improvements, food assistance, and school construction. An inaccurate census will skew the distribution of these resources for the next decade, meaning many communities will not get the funding they need.
- 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 is no precedent for trying to determine, through a universal survey, whether residents are living in the U.S. unlawfully. The likelihood of collecting reliable responses is remote, at best. Instead, response rates in every community would plunge, even for citizens and legal permanent residents who might live with undocumented immigrants.
- There are no reliable administrative record datasets that identify undocumented immigrants and their usual residence as of Census Day (April 1). (Immigrants who have applied for asylum are not in the U.S. unlawfully.)