

ENSURING A FAIR AND ACCURATE CENSUS ACT

SEPTEMBER 9, 2022.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mrs. CAROLYN B. MALONEY of New York, from the Committee on Oversight and Reform, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 8326]

The Committee on Oversight and Reform, to whom was referred the bill (H.R. 8326) to amend title 13, United States Code, to improve the operations of the Bureau of the Census, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Ensuring a Fair and Accurate Census Act”.

SEC. 2. MODIFICATION OF CERTAIN BUREAU OF THE CENSUS AUTHORITIES.

(a) BUDGET REQUESTS.—

(1) IN GENERAL.—Subchapter I of chapter 1 of title 13, United States Code, is amended by inserting after section 13 the following:

“§ 14. Budget requests

“(a) With respect to the budget request of the Bureau for fiscal year 2027 and each fiscal year thereafter submitted to the President for inclusion in the annual budget submission under section 1105(a) of title 31, the Secretary shall include in such request the estimated costs of carrying out the duties of the Bureau during the five-year period beginning on the fiscal year covered by such request.

“(b) On the date that the estimate of costs are submitted to the President under subsection (a), the Secretary shall submit such estimate to the Committee on Oversight and Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, the Committees on the Budget of the House of Representatives and the Senate, and the Committees on Appropriations of the House of Representatives and the Senate.”

(2) CLERICAL AMENDMENT.—The table of sections for such subchapter is amended by inserting after the item relating to section 13 the following new item:

“14. Budget requests.”.

(b) FOR-CAUSE REMOVAL OF DIRECTOR; DUTIES.—Section 21 of title 13, United States Code, is amended—

(1) in subsection (b)(3), by inserting after “the President” the following: “only for inefficiency, neglect of duty, or malfeasance in office”; and

(2) by amending subsection (c) to read as follows:

“(c) DUTIES.—

“(1) IN GENERAL.—The Director shall perform such duties as may be imposed upon the Director by law, regulations, or orders of the Secretary. The Director shall report directly to the Deputy Secretary of Commerce.

“(2) DECENNIAL CENSUS.—Any operational, statistical, or technical decision for any decennial census of population may be made only by the Director.”.

(c) ADVISORY COMMITTEES; DEPUTY DIRECTOR.—

(1) IN GENERAL.—Section 21 of title 13, United States Code, as amended by subsection (b), is further amended—

(A) in the section heading, by striking “duties” and inserting “**Deputy Director; advisory committees**”; and

(B) by adding at the end the following:

“(d) DEPUTY DIRECTOR.—

“(1) IN GENERAL.—There shall be in the Bureau a single Deputy Director of the Bureau, to be appointed by the Director. The position of Deputy Director shall be a career reserved position (as that term is defined in section 3132(a)(8) of title 5). The Deputy Director shall be selected from among any career appointee (as that term is defined in section 3132(a)(4) of such title) at any agency. The individual appointed to the position of Deputy Director shall possess knowledge of, or experience in, the work of the Bureau, and possess experience in relevant fields, including demography, economics, survey methodology, statistics, or data science.

“(2) FUNCTIONS.—The Deputy Director shall perform such functions as the Director shall designate. During any absence or disability of the Director, the Deputy Director shall act as Director.

“(3) VACANCY.—In the event of a vacancy in the office of Director, or when the Director is absent or unable to serve, the Deputy Director shall act as Director until a Director is appointed. If no individual is serving as Deputy Director, the highest level career employee of the Bureau shall act as Director until a Deputy Director or Director is appointed. This paragraph shall serve as the exclusive means of designating an acting Director.

“(e) ADVISORY COMMITTEES.—

“(1) GENERAL AUTHORITY.—In accordance with the Federal Advisory Committee Act (5 U.S.C. App.), and subject to paragraph (2), the Director may establish advisory committees to provide advice with respect to the mission of the Bureau. Members of any such committee, including a committee established

under paragraph (2), shall serve without compensation, but shall be entitled to transportation expenses and per diem in lieu of subsistence in accordance with section 5703 of title 5.

“(2) SPECIFIC ADVISORY COMMITTEES.—

“(A) BUREAU OF THE CENSUS ADVISORY COMMITTEE ON STATISTICAL QUALITY STANDARDS.—The Director shall appoint a committee, to be known as the ‘Advisory Committee on Statistical Quality Standards’, composed of five members to review and provide recommendations on the statistical quality standards of the Bureau that guide the production and release of all Bureau decennial census products.

“(B) NATIONAL ADVISORY COMMITTEE AND SCIENTIFIC ADVISORY COMMITTEE.—There are hereby established the Bureau of the Census Scientific Advisory Committee and the Census Bureau National Advisory Committee on Racial, Ethnic, and Other Populations, as described in the charters for each such committee published on March 15, 2022, and March 23, 2022, respectively, or any subsequent charters. Such advisory committees shall operate under the terms and conditions set forth in the applicable charter.

“(C) 2030 CENSUS ADVISORY COMMITTEE.—The Director shall appoint an advisory committee, substantially similar to the 2010 Census Advisory Committee, consisting of up to 20 member organizations to address policy, research, and technical issues related to the design and implementation of the 2030 decennial census and the American Community Survey.”.

(2) CLERICAL AMENDMENT.—The table of sections for subchapter II of chapter 1 of such title is amended by striking the item relating to section 21 and inserting the following:

“21. Director of the Census; Deputy Director; advisory committees.”.

(d) POSITION REQUIREMENTS.—Section 22 of title 13, United States Code, is amended—

(1) by striking “All permanent” and inserting “(a) IN GENERAL.—All permanent”, and

(2) by adding at the end the following:

“(b) POSITIONS.—Each position within the Bureau shall be a career position within the civil service, except for the position of the Director and not more than two other positions.”.

SEC. 3. LIMITATIONS AND REQUIREMENTS FOR THE DECENNIAL CENSUS.

Section 141 of title 13, United States Code, is amended—

(1) by redesignating subsection (g) as subsection (i); and

(2) by inserting after subsection (f) the following:

“(g) LIMITATIONS AND REQUIREMENTS.—

“(1) NOTICE TO CONGRESS OF SUBJECTS, TYPES OF INFORMATION, AND QUESTIONS.—In the 2030 decennial census of population and each decennial census thereafter, the Secretary may not include any subject, type of information, or question that was not submitted to Congress in accordance with subsection (f).

“(2) BIENNIAL REPORTS.—

“(A) SUBMISSION TO CONGRESS.—Not later than April 1 of the calendar year beginning after the date of enactment of the Ensuring a Fair and Accurate Census Act and biannually thereafter, the Secretary shall submit to Congress a report that—

“(i) describes each component of the operational plan for the subsequent decennial census of population; and

“(ii) includes a detailed statement on the status of all research, testing, and operations that are part of the Bureau’s comprehensive plan for the decennial census.

“(B) INTERNET PUBLICATION.—On the date on which the Secretary submits a report under subparagraph (A), the Secretary shall publish the report on the public internet website of the Bureau.

“(3) SECRETARY CERTIFICATION.—

“(A) IN GENERAL.—The Secretary, upon the date of submission of the report required by subsection (f)(2), shall submit, to the committees of Congress having legislative jurisdiction over the census, a certification stating that any question that has not appeared on the previous two decennial censuses has been researched, studied, and tested according to established statistical policies and procedures.

“(B) GAO REVIEW.—Not later than 6 months after the Secretary submits a certification under paragraph (2), the Comptroller General of the United States shall review such certification and submit a report to Congress on whether the questions to be included in the census have been researched,

studied, and tested according to established statistical policies and procedures.”; and
 (3) in subsection (i), as so redesignated, by inserting “DEFINITION.—” before “As used in”.

SEC. 4. DECENNIAL CENSUS LIFECYCLE COST ESTIMATES.

Section 141 of title 13, United States Code, as amended by section 3, is further amended by inserting after subsection (g) the following:

“(h) LIFECYCLE COSTS.—

“(1) ESTIMATE.—Not later than January 1, 2026, and every ten years thereafter, the Director shall transmit to the chairs of the committees described in paragraph (3) a lifecycle cost estimate for the decennial census of population first occurring after the date of such transmittal. Such estimate shall include the following with respect to such lifecycle:

“(A) An estimate of costs by each fiscal year.

“(B) Estimates of capital versus operating expenses.

“(C) Staffing projections for each year.

“(D) Assumptions about response rates, wages, and other economic variables.

“(2) UPDATE.—On the date the President submits the annual budget under section 1105(a) of title 31 during any calendar year a decennial of census of population is taken under this section, and on the date such annual budget is submitted during the immediately preceding four calendar years, the Director shall transmit a report describing any changes to the applicable lifecycle estimate transmitted under paragraph (1). Such report shall include the following:

“(A) The basis for any such changes.

“(B) Projected impacts on response rates, staffing requirements, or costs throughout the lifecycle.

“(C) An explanation of any differences in budgetary resources between the amount requested in the President’s annual budget request and the lifecycle cost estimate, as updated by this paragraph.

“(3) COMMITTEES.—The committees described in this paragraph are the Committee on Oversight and Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committees on Appropriations of the House of Representatives and the Senate.”.

SUMMARY AND PURPOSE OF LEGISLATION

The Ensuring a Fair and Accurate Census Act would improve the operations of the Census Bureau and reduce the potential for political interference in the conduct of the Bureau’s constitutionally and statutorily mandated surveys.

BACKGROUND AND NEED FOR LEGISLATION

A fair and accurate census is critical to American democracy and required by the Constitution. The decennial census determines representation at every level of government, from Congress to school boards. Census data drives over \$1.5 trillion in annual funding for critical services like hospitals, schools, disaster response, and road and bridge repair. Businesses large and small rely on census data to identify new markets and make investment decisions that create jobs and grow the economy. An independent Census Bureau with non-political, career data scientists and statisticians is essential to fulfill the vital mission of the census.

During the 116th and 117th Congresses, the Oversight Committee conducted a comprehensive investigation of efforts by the Trump Administration to add a citizenship question to the 2020 Census for partisan political gain—efforts that risked undermining the accuracy of the census.

Initial findings from the Committee’s investigation were detailed in the Committee’s bipartisan June 2019 contempt report and Chairwoman Maloney’s November 12, 2019, memorandum for

Members.¹ On July 20, 2022, Chairwoman Maloney sent a memorandum to Members of the Committee on Oversight and Reform with additional information and findings from the Committee’s investigation.²

The Committee’s investigation exposed how a group of political appointees sought to use the census to advance an ideological agenda and potentially exclude non-citizens from the apportionment count. Despite experts, statisticians, and stakeholders warning of the threats that a citizenship question could pose to the census, Trump Administration officials pressed forward until the Supreme Court ruled their effort was illegal.

Career experts consistently advised Trump Administration officials about the dangers of adding a citizenship question to the census. On January 19, 2018, the Census Bureau’s chief scientist, Dr. John Abowd, wrote to Commerce Secretary Wilbur Ross that “adding a citizenship question to the 2020 Census” is “very costly, harms the quality of the census count, and would use substantially less accurate citizenship status data than are available from administrative sources.”³

On January 26, 2018, six former Census Bureau directors—who served in both Democratic and Republican administrations—sent a letter to Secretary Ross opposing the addition of the citizenship question, expressing concerns that it would “put the accuracy of the enumeration and success of the census in all communities at grave risk.”⁴ Despite these warnings, Secretary Ross moved forward with adding the citizenship question to the census.

Secretary Ross did not provide timely or accurate information to Congress about the addition of the citizenship question. Although the Secretary of Commerce is required to notify Congress of “subjects” to be included on the decennial census three years in advance, Secretary Ross and his staff purposely kept their efforts to add a citizenship question a secret from Congress and the public for months, until the Secretary finally announced his intent to add this question in 2018 and provided a false rationale for doing so.⁵

When the Supreme Court struck down the Trump Administration’s illegal attempt to add a citizenship question to the 2020 Census, Chief Justice John Roberts observed that the Trump Administration’s stated rationale for including the citizenship question—to help enforce the Voting Rights Act (VRA)—“seems to have been

¹ Committee on Oversight and Reform, *Resolution Recommending that the House of Representatives Find William P. Barr, Attorney General of the United States, and Wilbur L. Ross, Jr., Secretary of Commerce, in Contempt of Congress for Refusal to Comply with Subpoenas Duly Issued by the Committee on Oversight and Reform*, 116th Cong. (2019) (H. Res. 497), Memorandum from Acting Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, to Members of the Committee on Oversight and Reform, *Update on Investigation of Census Citizenship Question Since House Held Attorney General Barr and Commerce Secretary Ross in Contempt of Congress* (Nov. 12, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-11-12.Memo%20to%20COR%20Members%20re.%20Census.pdf>).

² Memorandum from Chairwoman Carolyn B. Maloney to Members, Committee on Oversight and Reform (July 20, 2022) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2022.07.20%20COR%20Census%20Memorandum.pdf>).

³ Memorandum from John Abowd, Chief Scientist, Census Bureau, to Secretary Wilbur L. Ross, Jr., Department of Commerce (Jan. 19, 2018) (online at www.osec.doc.gov/opog/FOIA/Documents/AR%20-%20FINAL%20FILED%20-%20ALL%20DOCS%20%5bCERTIFICATION-INDEX-DOCUMENTS%5d%206.8.18.pdf#page=1289).

⁴ Letter from Former Census Bureau Directors to Secretary Wilbur L. Ross, Jr., Department of Commerce (Jan. 26, 2018) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/DOJ%20census%20ques%20request-Former%20Directors%20tr%20%20Ross.pdf>).

⁵ See 13 U.S.C. § 141 (f)(1).

contrived.” The Committee obtained documents showing Chief Justice Roberts was right. These documents reveal that even as the Trump Administration was developing its contrived rationale, top Administration officials were secretly exploring what appears to have been their true reason for adding the citizenship question: to exclude non-citizens from congressional apportionment counts, contrary to the clear language of the Constitution.

These documents shed light on the real reasons that the Trump Administration tried to add a citizenship question to the 2020 Census, and the steps Commerce officials took to justify Secretary Ross’s efforts to add the question. They also make clear that President Trump used executive privilege to withhold materials that confirm that VRA enforcement was a mere pretext for including a citizenship question on the 2020 Census.

The documents obtained by the Committee—including a legal memorandum prepared for Secretary Ross and secret communications between Trump Administration lawyers and political appointees—shed additional light on the depth of partisan manipulation in the 2020 Census, including senior officials’ focus on using a citizenship question to alter apportionment counts and their illegal attempt to develop a pretext.

Investigative work by the Committee also revealed efforts by political appointees to rush to complete processing of census data before President Trump left office—despite repeated warnings from career staff that this could lead to serious data errors and compromise the integrity of the census count.⁶

The factual findings from the Committee’s investigation reveal the vulnerability of our national statistical system to partisan manipulation and highlight the need for Congress to protect the constitutionally mandated census from abuses of power and political interference.⁷ Although the Committee’s oversight and judicial intervention helped turn back many of the worst abuses during the 2020 Census, political interference nevertheless appears to have impacted the Census’s accuracy. In March 2022, the Census Bureau released data showing that show the 2020 Census undercounted the U.S. population by nearly 19 million, failing to count many Black, Latino, and Indigenous Americans, while overcounting white and Asian Americans. In particular, Latinos were undercounted at three times the rate at which they were undercounted in the 2010 Census.⁸

To help prevent similar political interference from occurring again, the Committee has developed H.R. 8326, the Ensuring a Fair and Accurate Census Act of 2022. This bill is designed to protect the Census Bureau and its career employees from political ma-

⁶ See, e.g., Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, to Secretary Wilbur L. Ross, Jr., Department of Commerce (Dec. 2, 2020) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2020-12-02.CBM%20to%20Ross-Commerce%20re%202020%20Census%20Count.pdf>).

⁷ The Committee’s November 2019 legal filing explained that the subpoenaed documents could lead the Committee to pursue “a wide range of legislative reforms” including “legislative measures to curb political influence on the census” and “new, judicially enforceable reporting obligations to increase visibility into how the census is being administered.” Committee on Oversight and Reform, Complaint, Committee on Oversight and Reform v. Barr, 1:19-cv-03557 (D.D.C.) (Filed Nov. 26, 2019).

⁸ Census Bureau, *Press Release: Census Bureau Releases Estimates of Undercount and Overcount in the 2020 Census* (Mar. 10, 2022) (online at www.census.gov/newsroom/press-releases/2022/2020-census-estimates-of-undercount-and-overcount.html).

nipulation and pressure similar to that experienced in the run-up to the 2020 Census.

H.R. 8326 would vest consequential decision-making authority concerning decennial censuses solely with the Director of the Census Bureau and protect the Director from partisan interference. The bill would also require the appointment of a Deputy Director of the Bureau with career experience and technical expertise. The Ensuring a Fair and Accurate Census Act would also limit the number of political appointees at the Census Bureau.

H.R. 8326 would provide transparency into the budgetary and operational planning of the Census Bureau by requiring five-year estimated budget needs with every budget request submitted to the President. The Secretary of Commerce (Secretary) would be required to submit the budget of the Census Bureau to the appropriate congressional committees when it is transmitted to the President. The Secretary would be required to produce a report on the impact of disparities in their estimated budget needs and the president's request to Congress. The Secretary would also be required to submit a report to Congress biannually on the operational plans for the next decennial census.

The Secretary would be required to certify that any new questions on decennial censuses have been researched, studied, and tested according to established statistical policies and procedures. The Government Accountability Office would be required to report to Congress on compliance with such procedures.

Finally, H.R. 8326 would codify the Census Bureau's advisory committees—including those on statistical and scientific standards.

H.R. 8326 has been endorsed by four former directors of the Census Bureau, appointed by both Democratic and Republican presidents—Vincent Barabba, Kenneth Prewitt, Robert Graves, and John Thompson. In a statement of support the former Directors commended the bill's objective to “protect the independence and integrity of the scientific mission at the Census Bureau.” Having observed the serious challenges in the administration of the 2020 Census, the former directors highlighted the need for the reforms in H.R. 8326 to “build greater trust and confidence in the essential data the Census Bureau supplies to the nation.” The former directors concluded: “Trust in the nation's official data is essential to the democracy and the economy, and this legislation will undergird that trust.”⁹

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short title

The short title is the “Ensuring a Fair and Accurate Census Act”.

Sec. 2. Modification of certain Bureau of the Census authorities

Subsection (a) Budget Requests

This subsection amends title 13 of the United States Code (U.S.C.) by adding a new section 14, which would require that beginning with the budget request submitted to the President for fis-

⁹Statement by Former U.S. Census Bureau Directors in Support of House Legislation “Ensuring a Fair and Accurate Census Act” (July 12, 2022) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Statement%20by%20Former%20Directors%207.12.22%20on%20Census%20Reform%20Bill_0.pdf).

cal year 2027, and each year thereafter, the Secretary of Commerce must include in the budget request the estimated costs of Bureaus operational needs for five years. The Secretary shall simultaneously transmit this estimate to the appropriate congressional committees, including the Committee on Oversight and Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committees on Appropriations of the House of Representatives and the Senate.

Subsection (b) For-Cause Removal of Director; Duties

This subsection would amend section 21 of title 13, U.S.C. to provide that the Director of the Census Bureau may be removed only for inefficiency, neglect of duty, or malfeasance in office. It further amends that section to require that the Director report directly to the Deputy Secretary of Commerce and that operational, statistical, or technical decisions for the decennial census may only be made by the Director.

Subsection (c) Advisory Committees; Deputy Director

This subsection further amends section 21 to provide that there may be only a single Deputy Director of the Census Bureau, appointed by the Director. The Deputy position is career-reserved and the individual appointed must possess knowledge of, or experience in, the work of the Bureau and experience in relevant fields including, demography, economics, survey methodology, statistics, or data science.

Subsection (c) also provides that the Deputy Director will perform the functions designated by the Director and shall serve as Director in the event of absence or disability of the Director. The highest-level career employee of the Bureau shall serve as Director if there are vacancies in the Director and Deputy Director positions at the Census Bureau.

Finally, subsection (c) grants the Director the authority to establish advisory committees and requires the establishment of certain advisory committees, including: the Census Advisory Committee on Statistical Quality Standards, which will include five members to advise on statistical quality standards of the Bureau that inform the production and release of all Census Bureau decennial census products; the National Advisory Committee and Scientific Advisory Committee and the Census Bureau National Advisory Committee on Racial, Ethnic, and Other Populations, as described by their charters as published on March 15 and March 23, 2022, respectively, or subsequent charters; and the 2030 Census Advisory Committee, which shall be established in a manner similar to the 2010 Census Advisory Committee and with no more than 20 member organizations to address policy, research, and technical issues pertaining to the design and administration of the 2030 decennial census and the American Community Survey.

Subsection (d) Position Requirements

This subsection amends section 22 of title 13, U.S.C. to require that all positions in the Bureau be career employees in the civil service, with the exception of the Director and no more than two more other appointees.

Sec. 3. Limitations and requirements for the decennial census

This section amends section 141 of title 13, U.S.C. in several ways. First, it would prohibit any subject, type of information, or question that was not submitted to Congress in accordance with the statutory notification process in subsection (f) of section 141 from being included on the any decennial census.

Second, it would require, beginning on April 1 of the calendar year after enactment, and biennially thereafter, a report to be submitted to Congress by the Secretary describing the operational plans and status of the Bureau's comprehensive plan for the decennial census. The report would be required to be published on the Bureau's website.

Third, this section would require the Secretary to submit a certification to the appropriate congressional committees two years prior to a decennial census confirming that any new questions appearing on a decennial questionnaire have been researched, studied, and tested according to established statistical policies and procedures. Not later than six months after the submission of the certification GAO would be required to report to Congress on whether the questions have been so researched and tested.

Sec. 4. Decennial census lifecycle cost estimates

This section further amends section 141 of title 13, U.S.C. by adding a new subsection (h), which would require the Director by January 1, 2026, and every ten years thereafter, to submit a lifecycle cost estimate for the decennial census to the appropriate congressional committees. This submission must include estimates of costs by each fiscal year, estimates of capital versus operating expenses, staffing projections per year, estimated response rates and wages, and other economic variables.

The Director would also be required to submit a report detailing any changes to the applicable decennial lifecycle cost estimate for the next four years, which must include the basis for any changes, projected impacts of changes on response rates, staffing requirements, or costs during the lifecycle and an explanation of budgetary disparities between the President's annual budget request and the lifecycle cost estimate.

LEGISLATIVE HISTORY

H.R. 8326, the Ensuring a Fair and Accurate Census Act, was introduced on July 11, 2022, by Chairwoman Carolyn B. Maloney. The bill was referred to the Committee on Oversight and Reform.

COMMITTEE CONSIDERATION

On July 14, 2022, the Committee met in open session and, with a quorum being present, began consideration of H.R. 8326 the Ensuring a Fair and Accurate Census Act. The bill was ordered reported, as amended, on July 20, 2022.

ROLL CALL VOTES

There were three roll call votes during consideration of H.R. 8326. Chairwoman Maloney's amendment in the nature of a substitute was agreed to by voice vote. The amendment offered by Rep.

Hice was not adopted on a roll call vote of 25 noes and 18 ayes. The amendment offered by Rep. Biggs was not adopted after a roll call vote of 25 noes and 18 ayes. H.R. 8326 was ordered reported to the House on a roll call vote of 25 ayes and 17 noes.

COMMITTEE ON OVERSIGHT AND REFORM

117TH CONGRESS

RATIO 25-20

ROLL CALL

Vote on: Rep. Hice Amendment to the ANS to H.R. 8326, the Ensuring a Fair and Accurate Census Act

Date: 7-20-22

VOTE #: 8

Democrats	Aye	No	Present	Republicans	Aye	No	Present
MS. MALONEY (NY) <i>(Chairwoman)</i>		X		MR. COMER (KY) <i>(Ranking Member)</i>	X		
MS. NORTON (DC)		X		MR. JORDAN (OH)	X		
MR. LYNCH (MA)		X		MS. FOXX (NC)	X		
MR. COOPER (TN)		X		MR. HICE (GA)	X		
MR. CONNOLLY (VA)		X		MR. GROTHMAN (WI)	X		
MR. KRISHNAMOORTHY (IL)		X		MR. CLOUD (TX)	X		
MR. RASKIN (MD)		X		MR. GIBBS (OH)	X		
MR. KHANNA (CA)		X		MR. HIGGINS (LA)	X		
MR. MFUME (MD)		X		MR. NORMAN (SC)	X		
MS. OCASIO-CORTEZ (NY)		X		MR. SESSIONS (TX)	X		
MS. TLAIB (MI)		X		MR. KELLER (PA)	X		
MS. PORTER (CA)		X		MR. BIGGS (AZ)	X		
MS. BUSH (MO)		X		MR. CLYDE (GA)	X		
MS. BROWN (OH)		X		MS. MACE (SC)	X		
MR. DAVIS (IL)		X		MR. FRANKLIN (FL)	X		
MS. WASSERMAN SCHULTZ (FL)		X		MR. LATURNER (KS)	X		
MR. WELCH (VT)		X		MR. FALLON (TX)	X		
MR. JOHNSON (GA)		X		MS. HERRELL (NM)	X		
MR. SARBANES (MD)		X		MR. DONALDS (FL)	X		
MS. SPEIER (CA)		X		MR. FLOOD (NE)	X		
MS. KELLY (IL)		X					
MS. LAWRENCE (MI)		X					
MR. DESAULNIER (CA)		X					
MR. GOMEZ (CA)		X					
MS. PRESSLEY (MA)		X					

Roll Call Totals: Ayes: 18 Nays: 25 Present:

Passed: _____ Failed: ____X____

(REVISED 1-25-2022)

COMMITTEE ON OVERSIGHT AND REFORM

117TH CONGRESS

RATIO 25-20

ROLL CALL

Vote on: Rep. Biggs Amendment to the ANS to H.R. 8326, the Ensuring a Fair and Accurate Census Act

Date: 7-20-22

VOTE #: 9

Democrats	Aye	No	Present	Republicans	Aye	No	Present
MS. MALONEY (NY) <i>(Chairwoman)</i>		X		MR. COMER (KY) <i>(Ranking Member)</i>	X		
MS. NORTON (DC)		X		MR. JORDAN (OH)			
MR. LYNCH (MA)		X		MS. FOXX (NC)	X		
MR. COOPER (TN)		X		MR. HICE (GA)	X		
MR. CONNOLLY (VA)		X		MR. GROTHMAN (WI)	X		
MR. KRISHNAMOORTHY (IL)		X		MR. CLOUD (TX)	X		
MR. RASKIN (MD)		X		MR. GIBBS (OH)	X		
MR. KHANNA (CA)		X		MR. HIGGINS (LA)	X		
MR. MFUME (MD)		X		MR. NORMAN (SC)	X		
MS. OCASIO-CORTEZ (NY)		X		MR. SESSIONS (TX)			
MS. TLAIB (MI)		X		MR. KELLER (PA)	X		
MS. PORTER (CA)		X		MR. BIGGS (AZ)	X		
MS. BUSH (MO)		X		MR. CLYDE (GA)	X		
MS. BROWN (OH)		X		MS. MACE (SC)	X		
MR. DAVIS (IL)		X		MR. FRANKLIN (FL)	X		
MS. WASSERMAN SCHULTZ (FL)		X		MR. LATURNER (KS)	X		
MR. WELCH (VT)		X		MR. FALLON (TX)	X		
MR. JOHNSON (GA)		X		MS. HERRELL (NM)	X		
MR. SARBANES (MD)		X		MR. DONALDS (FL)	X		
MS. SPEIER (CA)		X		MR. FLOOD (NE)	X		
MS. KELLY (IL)		X					
MS. LAWRENCE (MI)		X					
MR. DESAULNIER (CA)		X					
MR. GOMEZ (CA)		X					
MS. PRESSLEY (MA)		X					

Roll Call Totals: Ayes: 18 Nays: 25 Present:

Passed: _____ Failed: X

(REVISED 1-25-2022)

COMMITTEE ON OVERSIGHT AND REFORM

117TH CONGRESS

RATIO 25-20

ROLL CALL

Vote on: H.R. 8326, the Ensuring a Fair and Accurate Census Act, Final Passage, as amended

Date: 7-20-22

VOTE #: 10

Democrats	Aye	No	Present	Republicans	Aye	No	Present
MS. MALONEY (NY) <i>(Chairwoman)</i>	X			MR. COMER (KY) <i>(Ranking Member)</i>		X	
MS. NORTON (DC)	X			MR. JORDAN (OH)		X	
MR. LYNCH (MA)	X			MS. FOXX (NC)		X	
MR. COOPER (TN)	X			MR. HICE (GA)		X	
MR. CONNOLLY (VA)	X			MR. GROTHMAN (WI)		X	
MR. KRISHNAMOORTHY (IL)	X			MR. CLOUD (TX)		X	
MR. RASKIN (MD)	X			MR. GIBBS (OH)		X	
MR. KHANNA (CA)	X			MR. HIGGINS (LA)		X	
MR. MFUME (MD)	X			MR. NORMAN (SC)		X	
MS. OCASIO-CORTEZ (NY)	X			MR. SESSIONS (TX)		X	
MS. TLAIB (MI)	X			MR. KELLER (PA)		X	
MS. PORTER (CA)	X			MR. BIGGS (AZ)		X	
MS. BUSH (MO)	X			MR. CLYDE (GA)		X	
MS. BROWN (OH)	X			MS. MACE (SC)		X	
MR. DAVIS (IL)	X			MR. FRANKLIN (FL)		X	
MS. WASSERMAN SCHULTZ (FL)	X			MR. LATURNER (KS)		X	
MR. WELCH (VT)	X			MR. FALLON (TX)		X	
MR. JOHNSON (GA)	X			MS. HERRELL (NM)		X	
MR. SARBANES (MD)	X			MR. DONALDS (FL)		X	
MS. SPEIER (CA)	X			MR. FLOOD (NE)		X	
MS. KELLY (IL)	X						
MS. LAWRENCE (MI)	X						
MR. DESAULNIER (CA)	X						
MR. GOMEZ (CA)	X						
MS. PRESSLEY (MA)	X						

Roll Call Totals: Ayes: 25 Nays: 17 Present:

Passed: X

Failed: _____

(REVISED 1-25-2022)

EXPLANATION OF AMENDMENTS

During Committee consideration of the bill, Chairwoman Maloney (D-NY), offered an amendment to H.R. 8326 that clarified the establishment of advisory committees and required lifecycle funding cost estimates for each decennial census.

Rep. Hice offered an amendment that would have eliminated the for-cause removal provisions, struck the qualifications for Deputy Director and the vacancy provisions, and removed the required career status for employees of the Census Bureau and the limit on political appointees.

Rep. Biggs offered an amendment that would have required the Secretary of Commerce to include a question about citizenship status in the decennial census.

LIST OF RELATED COMMITTEE HEARINGS

In accordance with House rule XIII, clause 3, the Committee held the hearings listed below.

On March 14, 2019, the Committee held a hearing with then-Secretary of Commerce Wilbur L. Ross, Jr.

On May 18, 2019, the Committee held a hearing titled “Getting Counted: The Importance of the Census to State and Local Communities.”

On July 24, 2019, the Subcommittee on Civil Rights and Civil Liberties held a hearing on “Beyond the Citizenship Question: Repairing the Damage and Preparing to Count ‘We the People’ in 2020.”

On January 20, 2020, the Committee held a hearing on “Reaching Hard-to-Count Communities in the 2020 Census.”

On July 29, 2020, the Committee held a hearing on “Counting Every Person: Safeguarding the 2020 Census Against the Trump Administration’s Unconstitutional Attacks.”

On September 10, 2020, the Committee held a hearing on “Providing the Census Bureau with the Time to Produce a Complete and Accurate Census.”

On December 3, 2020, the Committee held a hearing on “Ensuring the 2020 Census Count is Complete and Accurate.”

On July 29, 2021, the Subcommittee on Civil Rights and Civil Liberties held a hearing on “Democracy in Danger: The Assault on Voting Rights in Texas”

On October 2, 2021, the Subcommittee on Civil Rights and Civil Liberties held a hearing on “Assessing the Election ‘Audit’ in Arizona and Threats to American Democracy.”

On March 1, 2022, the Committee held a hearing on “From Recession to Recovery: Examining the Impact of the American Rescue Plan’s State and Local Fiscal Recovery Funds.”

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee’s oversight findings and recommendations are reflected in the Background and Need for Legislation section above.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals or objectives of this bill are to amend title 13, U.S.C., to improve the operations of the Bureau of the Census, and for other purposes.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104-1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill does not relate to employment or access to public services and accommodations in the legislative branch.

DUPLICATION OF FEDERAL PROGRAMS

In accordance with clause 2(c)(5) of rule XIII no provision of this bill establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

This bill does not direct the completion of any specific rule makings within the meaning of section 551 of title 5, U.S.C.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that this legislation directs the establishment of advisory committees within the definition of Section 5(b) of the appendix to title 5, U.S.C.

UNFUNDED MANDATES STATEMENT

Pursuant to section 423 of the *Congressional Budget Act of 1974* the Committee has requested, but not yet received, a letter received from the Congressional Budget Office.

EARMARK IDENTIFICATION

This bill does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the House of Representatives.

COMMITTEE ESTIMATE

Pursuant to clause 3(d)(2)(B) of rule XIII of the Rules of the House of Representatives, the Committee has requested, but not yet received, a cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the *Congressional Budget Act of 1974*.

NEW BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the House of Representatives, the Committee has requested, but not yet received, a cost estimate prepared by the Congressional Budget Office.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

TITLE 13, UNITED STATES CODE

* * * * *

CHAPTER 1—ADMINISTRATION

SUBCHAPTER I—GENERAL PROVISIONS

Sec.

1. Definitions.

* * * * *

14. *Budget requests.*

* * * * *

SUBCHAPTER II—OFFICERS AND EMPLOYEES

[21. Director of the Census; duties.]

21. *Director of the Census; Deputy Director; advisory committees.*

* * * * *

SUBCHAPTER I—GENERAL PROVISIONS

* * * * *

§ 14. *Budget requests*

(a) With respect to the budget request of the Bureau for fiscal year 2027 and each fiscal year thereafter submitted to the President for inclusion in the annual budget submission under section 1105(a) of title 31, the Secretary shall include in such request the estimated costs of carrying out the duties of the Bureau during the five-year period beginning on the fiscal year covered by such request.

(b) On the date that the estimate of costs are submitted to the President under subsection (a), the Secretary shall submit such estimate to the Committee on Oversight and Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, the Committees on the Budget of the House of Representatives and the Senate, and the Committees on Appropriations of the House of Representatives and the Senate.

* * * * *

SUBCHAPTER II—OFFICERS AND EMPLOYEES

§ 21. Director of the Census; [duties] Deputy Director; advisory committees

(a) APPOINTMENT.—

(1) IN GENERAL.—The Bureau shall be headed by a Director of the Census, appointed by the President, by and with the advice and consent of the Senate, without regard to political affiliation.

(2) QUALIFICATIONS.—Such appointment shall be made from individuals who have a demonstrated ability in managing large organizations and experience in the collection, analysis, and use of statistical data.

(b) TERM OF OFFICE.—

(1) IN GENERAL.—The term of office of the Director shall be 5 years, and shall begin on January 1, 2012, and every fifth year thereafter. An individual may not serve more than 2 full terms as Director.

(2) VACANCIES.—Any individual appointed to fill a vacancy in such position, occurring before the expiration of the term for which such individual's predecessor was appointed, shall be appointed for the remainder of that term. The Director may serve after the end of the Director's term until reappointed or until a successor has been appointed, but in no event longer than 1 year after the end of such term.

(3) REMOVAL.—An individual serving as Director may be removed from office by the President *only for inefficiency, neglect of duty, or malfeasance in office*. The President shall communicate in writing the reasons for any such removal to both Houses of Congress not later than 60 days before the removal.

(4) PERSONNEL ACTIONS.—Except as provided under paragraph (3), nothing in this subsection shall prohibit a personnel action otherwise authorized by law with respect to the Director of the Census, other than removal.

[(c) DUTIES.—The Director shall perform such duties as may be imposed upon the Director by law, regulations, or orders of the Secretary.]

(c) DUTIES.—

(1) IN GENERAL.—*The Director shall perform such duties as may be imposed upon the Director by law, regulations, or orders of the Secretary. The Director shall report directly to the Deputy Secretary of Commerce.*

(2) DECENNIAL CENSUS.—*Any operational, statistical, or technical decision for any decennial census of population may be made only by the Director.*

(d) DEPUTY DIRECTOR.—

(1) IN GENERAL.—*There shall be in the Bureau a single Deputy Director of the Bureau, to be appointed by the Director. The position of Deputy Director shall be a career reserved position (as that term is defined in section 3132(a)(8) of title 5). The Deputy Director shall be selected from among any career appointee (as that term is defined in section 3132(a)(4) of such title) at any agency. The individual appointed to the position of Deputy Director shall possess knowledge of, or experience in, the work of the Bureau, and possess experience in relevant fields,*

including demography, economics, survey methodology, statistics, or data science.

(2) *FUNCTIONS.—The Deputy Director shall perform such functions as the Director shall designate. During any absence or disability of the Director, the Deputy Director shall act as Director.*

(3) *VACANCY.—In the event of a vacancy in the office of Director, or when the Director is absent or unable to serve, the Deputy Director shall act as Director until a Director is appointed. If no individual is serving as Deputy Director, the highest level career employee of the Bureau shall act as Director until a Deputy Director or Director is appointed. This paragraph shall serve as the exclusive means of designating an acting Director.*

(e) ADVISORY COMMITTEES.—

(1) *GENERAL AUTHORITY.—In accordance with the Federal Advisory Committee Act (5 U.S.C. App.), and subject to paragraph (2), the Director may establish advisory committees to provide advice with respect to the mission of the Bureau. Members of any such committee, including a committee established under paragraph (2), shall serve without compensation, but shall be entitled to transportation expenses and per diem in lieu of subsistence in accordance with section 5703 of title 5.*

(2) SPECIFIC ADVISORY COMMITTEES.—

(A) *BUREAU OF THE CENSUS ADVISORY COMMITTEE ON STATISTICAL QUALITY STANDARDS.—The Director shall appoint a committee, to be known as the “Advisory Committee on Statistical Quality Standards”, composed of five members to review and provide recommendations on the statistical quality standards of the Bureau that guide the production and release of all Bureau decennial census products.*

(B) *NATIONAL ADVISORY COMMITTEE AND SCIENTIFIC ADVISORY COMMITTEE.—There are hereby established the Bureau of the Census Scientific Advisory Committee and the Census Bureau National Advisory Committee on Racial, Ethnic, and Other Populations, as described in the charters for each such committee published on March 15, 2022, and March 23, 2022, respectively, or any subsequent charters. Such advisory committees shall operate under the terms and conditions set forth in the applicable charter.*

(C) *2030 CENSUS ADVISORY COMMITTEE.—The Director shall appoint an advisory committee, substantially similar to the 2010 Census Advisory Committee, consisting of up to 20 member organizations to address policy, research, and technical issues related to the design and implementation of the 2030 decennial census and the American Community Survey.*

§ 22. Qualifications of permanent personnel

[All permanent] (a) *IN GENERAL.—All permanent officers and employees of the Bureau shall be citizens of the United States.*

(b) *POSITIONS.—Each position within the Bureau shall be a career position within the civil service, except for the position of the Director and not more than two other positions.*

* * * * *

CHAPTER 5—CENSUSES

* * * * *

**SUBCHAPTER II—POPULATION, HOUSING, AND
UNEMPLOYMENT**

§ 141. Population and other census information

(a) The Secretary shall, in the year 1980 and every 10 years thereafter, take a decennial census of population as of the first day of April of such year, which date shall be known as the “decennial census date”, in such form and content as he may determine, including the use of sampling procedures and special surveys. In connection with any such census, the Secretary is authorized to obtain such other census information as necessary.

(b) The tabulation of total population by States under subsection (a) of this section as required for the apportionment of Representatives in Congress among the several States shall be completed within 9 months after the census date and reported by the Secretary to the President of the United States.

(c) The officers or public bodies having initial responsibility for the legislative apportionment or districting of each State may, not later than 3 years before the decennial census date, submit to the Secretary a plan identifying the geographic areas for which specific tabulations of population are desired. Each such plan shall be developed in accordance with criteria established by the Secretary, which he shall furnish to such officers or public bodies not later than April 1 of the fourth year preceding the decennial census date. Such criteria shall include requirements which assure that such plan shall be developed in a nonpartisan manner. Should the Secretary find that a plan submitted by such officers or public bodies does not meet the criteria established by him, he shall consult to the extent necessary with such officers or public bodies in order to achieve the alterations in such plan that he deems necessary to bring it into accord with such criteria. Any issues with respect to such plan remaining unresolved after such consultation shall be resolved by the Secretary, and in all cases he shall have final authority for determining the geographic format of such plan. Tabulations of population for the areas identified in any plan approved by the Secretary shall be completed by him as expeditiously as possible after the decennial census date and reported to the Governor of the State involved and to the officers or public bodies having responsibility for legislative apportionment or districting of such State, except that such tabulations of population of each State requesting a tabulation plan, and basic tabulations of population of each other State, shall, in any event, be completed, reported, and transmitted to each respective State within one year after the decennial census date.

(d) Without regard to subsections (a), (b), and (c) of this section, the Secretary, in the year 1985 and every 10 years thereafter, shall conduct a mid-decade census of population in such form and content as he may determine, including the use of sampling procedures and special surveys, taking into account the extent to which information to be obtained from such census will serve in lieu of information collected annually or less frequently in surveys or other statistical studies. The census shall be taken as of the first

day of April of each such year, which date shall be known as the “mid-decade census date”.

(e)(1) If—

(A) in the administration of any program established by or under Federal law which provides benefits to State or local governments or to other recipients, eligibility for or the amount of such benefits would (without regard to this paragraph) be determined by taking into account data obtained in the most recent decennial census, and

(B) comparable data is obtained in a mid-decade census conducted after such decennial census,

then in the determination of such eligibility or amount of benefits the most recent data available from either the mid-decade or decennial census shall be used.

(2) Information obtained in any mid-decade census shall not be used for apportionment of Representatives in Congress among the several States, nor shall such information be used in prescribing congressional districts.

(f) With respect to each decennial and mid-decade census conducted under subsection (a) or (d) of this section, the Secretary shall submit to the committees of Congress having legislative jurisdiction over the census—

(1) not later than 3 years before the appropriate census date, a report containing the Secretary’s determination of the subjects proposed to be included, and the types of information to be compiled, in such census;

(2) not later than 2 years before the appropriate census date, a report containing the Secretary’s determination of the questions proposed to be included in such census; and

(3) after submission of a report under paragraph (1) or (2) of this subsection and before the appropriate census date, if the Secretary finds new circumstances exist which necessitate that the subjects, types of information, or questions contained in reports so submitted be modified, a report containing the Secretary’s determination of the subjects, types of information, or questions as proposed to be modified.

(g) *LIMITATIONS AND REQUIREMENTS.*—

(1) *NOTICE TO CONGRESS OF SUBJECTS, TYPES OF INFORMATION, AND QUESTIONS.*—*In the 2030 decennial census of population and each decennial census thereafter, the Secretary may not include any subject, type of information, or question that was not submitted to Congress in accordance with subsection (f).*

(2) *BIENNIAL REPORTS.*—

(A) *SUBMISSION TO CONGRESS.*—*Not later than April 1 of the calendar year beginning after the date of enactment of the Ensuring a Fair and Accurate Census Act and biennially thereafter, the Secretary shall submit to Congress a report that—*

(i) describes each component of the operational plan for the subsequent decennial census of population; and

(ii) includes a detailed statement on the status of all research, testing, and operations that are part of the Bureau’s comprehensive plan for the decennial census.

(B) *INTERNET PUBLICATION.*—On the date on which the Secretary submits a report under subparagraph (A), the Secretary shall publish the report on the public internet website of the Bureau.

(3) *SECRETARY CERTIFICATION.*—

(A) *IN GENERAL.*—The Secretary, upon the date of submission of the report required by subsection (f)(2), shall submit, to the committees of Congress having legislative jurisdiction over the census, a certification stating that any question that has not appeared on the previous two decennial censuses has been researched, studied, and tested according to established statistical policies and procedures.

(B) *GAO REVIEW.*—Not later than 6 months after the Secretary submits a certification under paragraph (2), the Comptroller General of the United States shall review such certification and submit a report to Congress on whether the questions to be included in the census have been researched, studied, and tested according to established statistical policies and procedures.

(h) *LIFECYCLE COSTS.*—

(1) *ESTIMATE.*—Not later than January 1, 2026, and every ten years thereafter, the Director shall transmit to the chairs of the committees described in paragraph (3) a lifecycle cost estimate for the decennial census of population first occurring after the date of such transmittal. Such estimate shall include the following with respect to such lifecycle:

(A) An estimate of costs by each fiscal year.

(B) Estimates of capital versus operating expenses.

(C) Staffing projections for each year.

(D) Assumptions about response rates, wages, and other economic variables.

(2) *UPDATE.*—On the date the President submits the annual budget under section 1105(a) of title 31 during any calendar year a decennial of census of population is taken under this section, and on the date such annual budget is submitted during the immediately preceding four calendar years, the Director shall transmit a report describing any changes to the applicable lifecycle estimate transmitted under paragraph (1). Such report shall include the following:

(A) The basis for any such changes.

(B) Projected impacts on response rates, staffing requirements, or costs throughout the lifecycle.

(C) An explanation of any differences in budgetary resources between the amount requested in the President's annual budget request and the lifecycle cost estimate, as updated by this paragraph.

(3) *COMMITTEES.*—The committees described in this paragraph are the Committee on Oversight and Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committees on Appropriations of the House of Representatives and the Senate.

[(g)] (i) *DEFINITION.*—As used in this section, “census of population” means a census of population, housing, and matters relating to population and housing.

* * * * *

MINORITY VIEWS

Committee Republicans oppose H.R. 8326. The bill fails to ensure a fair and accurate census. The bill insulates the Census Bureau from accountability to the President and his appointed political officials—*i.e.*, those who are best positioned to assure a census the voters will regard as fair and accurate. The bill also severely constrains the ability of future censuses to include important new questions, such as a citizenship question. Indeed, the bill is primarily a vehicle for ensuring a citizenship question might never again be added to the census—guaranteeing future censuses will be unfair and inaccurate.

I. H.R. 8326 RADICALLY AND IRRESPONSIBLY SHIELDS THE CENSUS BUREAU FROM POLITICAL ACCOUNTABILITY

The hallmark of the U.S. Constitution is that it ensures a government “of the people, by the people, for the people.”¹ Accountability of the government to the voters is the bedrock for assuring our federal government acts fairly, accurately and in the best interest of the people. Whenever that accountability is diminished, the door is opened to a government that acts at the whim of government officials—not in the interests of the voters. Yet, rather than strengthen government accountability, H.R. 3826 radically and irresponsibly weakens it at the Census Bureau.

First, the bill shields the Census Bureau’s director from full accountability to the President and his or her administration’s leadership at the Department of Commerce. Rather than being removable at will, or even broadly “for cause”—such as insubordination—the director would be removable only for cause related to “inefficiency, neglect of duty, or malfeasance in office.”² Making matters worse, the bill grants the director sole authority to make operational, statistical or technical decisions about the census.³ If the director were to be wrong about any number of those decisions, the President would be powerless to remove him or her unless the reasons fit into the categories of “inefficiency, neglect of duty, or malfeasance.” A host of issues impacting the census’ fairness and accuracy could well fall outside those grounds.

Second, the bill allows only a career employee to serve as acting director.⁴ This means that, whenever a Senate-confirmed director is not in place at the bureau, only a career employee, insulated from political accountability, can lead the Bureau.⁵ This would include, of course, leading the Bureau by making all operational, statistical or technical decisions about the census.

¹ President Abraham Lincoln, *Gettysburg Address* (Nov. 19, 1863).

² H.R. 8326, para. 2(b)(1).

³ *Id.*, para. 2(c)(2).

⁴ *Id.*, subpara. 2(c)(1)(B).

⁵ *See id.*

Finally, the bill caps at three the number of political appointees who can serve at the Bureau.⁶ This substantially limits the ability of politically accountable Bureau leadership to keep pace with and assure full command of all issues at the Bureau.

Government Operations Subcommittee Ranking Member Hice offered an amendment to cure all of these problems at the Committee’s markup of this bill. That amendment, however, was rejected on a party-line vote.⁷

We have already seen the consequences when the Census Bureau bureaucracy makes decisions. The 2020 Census was filled with challenges presented by the COVID–19 pandemic.⁸ This may well have undermined the accuracy of the 2020 Census’ enumeration and apportionment phases.⁹ For example, just this May, the Census Bureau revealed that its Post-Enumeration Survey suggested there were significant undercounts and overcounts in at least fourteen states.¹⁰ These mistaken counts could have impacted the apportionment of congressional districts in several states—favoring Democrat-led states and disfavoring Republican-led states.¹¹ And they all occurred in the context of “operational, statistical, and technical” decisions made by the Bureau. We do not yet know what the true counts should have been. But this bill does nothing to get at the heart of that problem.

II. H.R. 8326 ULTIMATELY SERVES AS A VEHICLE TO ENSURE A CITIZENSHIP QUESTION MIGHT NEVER AGAIN BE ADDED TO THE CENSUS

This bill also tries to prevent a citizenship question—and/or other new questions—from being included in the census.

In the course of the 2020 census, the Trump Administration’s attempt to include a citizenship question in the census generated great controversy.¹² Whether the question could be included, in fact, went all the way to the Supreme Court. There, the Court determined the action by which the question was included ran afoul of the Administrative Procedure Act.¹³ Crucially, however, the Court recognized the constitutionality of including a citizenship question and that such a question had been included in many previous censuses.¹⁴ Nevertheless, the Trump Administration ultimately left the question out of the 2020 Census.¹⁵

This exclusion was unfortunate. Given that the census provides the numerical basis for the apportionment of congressional districts every ten years, it is critical for the census to count specifically the number of citizens in each state. Only in that way can it be as-

⁶*Id.*, subsec. 2(d).

⁷Amend. offered by Rep. Jody Hice (R–GA) to H.R. 8326 striking provisions reducing the accountability of the Census Bureau and other Bureau officials (July 14, 2022).

⁸*See, e.g.*, U.S. Census Bureau, *2020 Census Operation Adjustments Due to COVID–19* (last revised Mar. 28, 2022); U.S. Census Bureau, *U.S. Census Bureau Releases 2020 Undercount and Overcount Rates by State and the District of Columbia* (May 19, 2022) (“PES Survey Release”).

⁹*See, e.g.*, Editorial Board, *Who Rigged the Census? Undercounts May Have Cost Florida and Texas Another House Seat*, Wall Street Journal (May 20, 2022).

¹⁰PES Survey Release.

¹¹*See, e.g.*, Hans von Spakovsky, *Federal Government’s Bungled Census Bad News for Red States. Here’s Why*, The Daily Signal (Sept. 5, 2022).

¹²*See, e.g.*, Howard Husock, *Who’s Counting Whom? Trump Should Win the Census and Citizenship Fight*, City Journal (Dec. 3, 2018).

¹³*Department of Commerce v. New York*, 588 U.S. ___, 139 S. Ct. 2551, 2576 (2019).

¹⁴*Id.* at 2566–67.

¹⁵Rebecca Ballhaus, Brett Kendall, *Trump Drops Effort to Put Citizenship Question on Census*, Wall Street Journal (July 11, 2019).

sured that each citizen is guaranteed equal representation in Congress.

Going forward, it is our hope that future censuses will regularly include a citizenship question. H.R. 8326, however, makes it very much harder for that to occur. First, the bill requires that the Secretary of Commerce “submit, to the committees of Congress having legislative jurisdiction over the census, a certification stating that any question that has not appeared on the previous two decennial censuses has been researched, studied, and tested according to established statistical policies and procedures.”¹⁶ That would, of course, prevent the inclusion of a citizenship question until at least the 2050 Census. Then, the bill requires the Comptroller General to “review such certification and submit a report to Congress on whether the questions to be included in the census have been researched, studied, and tested according to established statistical policies and procedures.”¹⁷ The bill then places all “operational, statistical, and technical decisions” in the hands of an unaccountable Census Bureau director, who cannot be removed other than for cause based on “inefficiency, neglect of duty, or malfeasance in office,” or an unaccountable career official acting as director.¹⁸ Either a director or an acting director could readily assert his or her refusal to include a citizenship question in the census. They could even refuse to “research[], stud[y], and test[] it according to established statistical policies and procedures”—which policies and procedures, moreover, it would be up to them to “establish.”

Rep. Biggs offered an amendment at markup to assure a citizenship question would be included in future censuses and apportionment of congressional districts would occur according to the number of citizens in each state. That amendment, however, like Rep. Hice’s, was rejected on a party-line vote.¹⁹

III. CONCLUSION

Committee Republicans oppose H.R. 8326.

JAMES COMER,
*Ranking Member, Committee
on Oversight and Reform.*



¹⁶ H.R. 8326, sec. 3.

¹⁷ *Id.*

¹⁸ *Id.* at subsecs. 2(b)–(c).

¹⁹ Amend. offered by Rep. Andy Biggs (R-AZ) to H.R. 8326 to assure a citizenship question would be included in future censuses (July 14, 2022).