

EQUAL REPRESENTATION ACT

APRIL 29, 2024.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. COMER, from the Committee on Oversight and Accountability, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 7109]

The Committee on Oversight and Accountability, to whom was referred the bill (H.R. 7109) 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, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

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The amendments are as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Equal Representation Act”.

SEC. 2. CITIZENSHIP STATUS ON DECENNIAL CENSUS.

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

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

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

“(g)(1) In conducting the 2030 decennial census and each decennial census thereafter, the Secretary shall include in any questionnaire distributed or otherwise used for the purpose of determining the total population by States a checkbox or other similar option for the respondent to indicate, for the respondent and for each of the members of the household of the respondent, whether that individual is a citizen of the United States.

“(2) Not later than 120 days after completion of a decennial census of the population under subsection (a), the Secretary shall make publicly available the number of individuals per State, disaggregated by citizens of the United States and noncitizens, as tabulated in accordance with this section.”.

SEC. 3. EXCLUSION OF NONCITIZENS FROM NUMBER OF PERSONS USED TO DETERMINE APPORTIONMENT OF REPRESENTATIVES AND NUMBER OF ELECTORAL VOTES.

(a) EXCLUSION.—Section 22(a) of the Act entitled “An Act to provide for the fifteenth and subsequent decennial censuses and to provide for apportionment of Representatives in Congress”, approved June 18, 1929 (2 U.S.C. 2a(a)), is amended by inserting after “not taxed” the following: “and individuals who are not citizens of the United States”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to the apportionment of Representatives carried out pursuant to the decennial census conducted during 2030 and any succeeding decennial census.

SEC. 4. SEVERABILITY CLAUSE.

If any provision of this Act or amendment made by this Act, or the application thereof to any person or circumstance, is held to be unconstitutional, the remainder of the provisions of this Act and amendments made by this Act, and the application of the provision or amendment to any other person or circumstance, shall not be affected.

Amend the title so as to read:

A bill 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 individuals.

SUMMARY AND PURPOSE OF LEGISLATION

H.R. 7109 directs the inclusion of a question on the decennial census questionnaire for each respondent to indicate for themselves and for each household member whether they are a citizen of the United States. It also amends existing statutes to make clear that only citizens are included in the population of a state for the purpose of apportioning representatives and numbers of electors for President of the United States among the states.

BACKGROUND AND NEED FOR LEGISLATION

I. CITIZENSHIP QUESTION ON THE DECENNIAL CENSUS QUESTIONNAIRE

The decennial census should collect information about the citizenship status of a respondent or household member. The citizenship makeup of the population in the United States is a basic data point that should be available to U.S. policymakers, and the decen-

nial census questionnaire is the best way to obtain such detailed information on citizenship status.

Article I of the U.S. Constitution requires a census of the population be taken every ten years to form the basis of apportionment and empowers Congress to carry out the decennial census “in such Manner as they shall by Law direct.”¹ The Supreme Court has explained that Congress is permitted by the Constitution “to inquire about citizenship on the census questionnaire.”² “That conclusion follows from Congress’s broad authority over the census, as informed by long and consistent historical practice that ‘has been open, widespread, and unchallenged since the early days of the republic.’”³ Thus, adding a citizenship question to the decennial census questionnaire is an appropriate exercise of the Article I authority over the census.

This data collection is also necessary to provide reliable and accurate data to U.S. policymakers. Current data on citizenship collected by the Census Bureau in the American Community Survey is limited to annual estimates suffering from high rates of error. In contrast, the decennial census is an actual enumeration of the entire population of the United States, so the data on citizenship collected from respondents and their household members would be much more accurate.

Despite the minority’s claims, adding a citizenship question will not reduce overall participation in the census. Answering whether an individual respondent or household member is or is not a citizen reveals only that data point. It does not reveal if an individual respondent or household member is present in the United States unlawfully. That individual respondent or household member could have lawful permanent residence or be a nonimmigrant lawfully residing in the United States during a temporary period of authorized stay. Additionally, only aggregate-level information will be released, as current law already imposes strict confidentiality requirements on the dissemination of individual-level census data tied to a particular respondent or household with criminal penalties for violations.⁴ Thus, a citizenship question should not depress participation in the decennial census by aliens residing in the United States. Even if misinformed respondents were for some reason reluctant to complete the decennial census questionnaire, they would still likely be enumerated by the Census Bureau using other methods such as review of official records to determine the inhabitants of a particular address or by using proxy information such as reliable information from a neighbor.

II. APPORTIONMENT EXCLUSION

In addition to collecting whether a respondent or household member is a citizen of the United States, H.R. 7109 would restore the “one person, one vote” principle in apportionment by including only citizens in the apportionment base used to apportion represen-

¹U.S. Constitution, Article I, §2, cl. 3 (. . . “The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. . .”).

²*Department of Commerce v. New York*, 588 U.S. (2019).

³*Id.* at Syllabus headnote 2 (citing *NLRB v. Noel Canning*, 573 U.S. 513, 572 (Scalia, J., concurring in judgment)).

⁴*See* 13 U.S.C. §§9, 214.

tation in the House of Representatives and allocate electoral college votes.

Only citizens are eligible to vote for candidates for federal offices, including Members of Congress and electors for the President of the United States.⁵ However, under current practice, noncitizens, including lawful permanent residents, nonimmigrants, and even illegal aliens, are wrongly included in a state's population for purposes of the apportionment calculation. Thus, states with higher proportions of noncitizens residing in that state are advantaged over states with a lower concentration of noncitizens.

In the case of illegal aliens, the status quo is particularly concerning, as some states or major metropolitan areas within those states have declared themselves sanctuary jurisdictions, shielding illegal aliens from federal immigration law enforcement with some even providing special services to the illegal alien population residing in those jurisdictions. Illegal aliens incentivized to move into those jurisdictions, who reside in that state on census day, and who are enumerated in the census, would add to the state's population for purposes of apportionment. Under the Biden Administration, millions of illegal aliens have entered the country. It is estimated that the total illegal alien population in the United States has increased since President Biden took office by 3.7 million individuals as of February 2024, accounting for departures and mortality.⁶ This means that illegal immigration inflows under the Biden Administration account for well more than half (58 percent) of the growth in the total foreign-born population in the United States during that same time period.⁷

According to now already outdated 2022 estimates published by the Census Bureau based on American Community Survey data, there were approximately 21.7 million noncitizens residing in the United States and the District of Columbia.⁸ However, these noncitizens were not evenly distributed among the states. For example, California's population was made up of more than 12 percent noncitizens, which comprised 4.75 million of the state's total 39 million population.⁹ New York's noncitizen population comprised 8.8 percent of its total population.¹⁰ Meanwhile, other states had fewer noncitizens. Specifically, Alabama and Kentucky were both comprised of only 2.2 percent noncitizens, Ohio and Louisiana both 2.3 percent, Mississippi 1.3 percent, and West Virginia only 0.76 percent.¹¹

These drastic differences can have an impact on representation distributions as a result of apportionment, especially where—as a single congressional seat must go to a state and cannot be divided among multiple states—small differences in population can be the deciding factor between a state gaining or losing an additional representative in its delegation. For example, New York lost a congressional seat that it otherwise would not have lost by a margin

⁵ See 18 U.S.C. § 611 (making it unlawful for aliens to vote in elections for federal offices).

⁶ Steven A. Camarota & Karen Zeigler, *The Foreign-Born Share and Number at Record Highs in February 2024*, CENTER FOR IMMIGRATION STUDIES (Mar. 28, 2024).

⁷ *Id.*

⁸ See U.S. Census Bureau, *2022: ACS 1-Year Estimates Selected Population Profiles, SO201 Selected Population Profile in the United States* (Foreign Born; not a U.S. citizen=21,673,046 +/- 149,842).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

of only 89 individuals during the 2020 apportionment.¹² Utah would have gained an additional Congressional seat in the 2000 apportionment but for a difference of only 856 additional individuals.¹³ An analysis by Pew Research Center in 2020, prior to the completion of the 2020 decennial census or apportionment based on that census, estimated that excluding only illegal aliens from the apportionment base would have a significant impact on representation.¹⁴ Specifically, the Pew study projected that California would lose two seats instead of one it was expected to lose, that Florida would gain only one additional seat instead of two, and that Texas would gain only two instead of three additional seats while Alabama, Minnesota, and Ohio would each maintain a seat they would otherwise lose.

Section 2 of the 14th Amendment to the Constitution requires that “Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed.”¹⁵ Section 5 of the 14th Amendment makes clear that Congress has the power “to enforce, by appropriate legislation” the provisions of the 14th Amendment, which it did with respect to Section 2 by passing implementing legislation that would be amended by H.R. 7109. Specifically, H.R. 7109 would exclude from the apportionment base “individuals who are not citizens of the United States.”

The minority argues that “whole number of persons” refers to any individual who manages to take up residence in the United States, whether they are citizens or noncitizens, and even if they do not reside in the United States under color of law, having entered the country unlawfully in the first place, or having somehow violated the terms of their lawful status or having failed to depart after the expiration of an authorized period of stay. This argument misunderstands the historical context of Section 2 of the 14th Amendment, which altered the prior Constitutional practice of counting enslaved individuals as partial persons. The phrase “whole number of persons” was specifically enacted to make clear that the drafters rejected counting individuals as partial persons as had been done since the Constitution directed the first enumeration and apportionment with respect to individuals who were enslaved.¹⁶ Thus, “whole number of persons” clearly signifies that an individual who counts for purposes of apportionment counts in their entirety. However, it does not in any way signify that any person taking up residence in a state must be counted for purpose of apportionment, and certainly not that noncitizens must be included in the apportionment base.

The minority also argues that court decisions dictate that any individual, including an illegal alien, who takes up residence in a state must be included in that state’s population for purposes of ap-

¹² See U.S. Census Bureau, *Table B2. Additional Apportionment Population Needed for First Runner-Up State to Gain Another Congressional Seat: 1940 to 2020*.

¹³ *Id.*

¹⁴ Jeffrey S. Passel & D’Vera Cohn, *How removing unauthorized immigrants from census statistics could affect House reapportionment*, PEW RESEARCH CENTER (July 24, 2020).

¹⁵ U.S. Constitution, Amdt. 14, § 2.

¹⁶ U.S. Constitution, Article I, § 2, cl. 3 (“Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons . . .”).

portionment of representation. This is also incorrect. The Supreme Court specifically declined in late 2020 to rule on the issue of whether the President could unilaterally, under existing statutes, exclude unlawful aliens from the apportionment base.¹⁷ In this case, it is Congress acting well within its authority to legislate under its authority in Section 5 of the 14th Amendment to amend the implementing statutes governing the implementation of Section 2. Moreover, there is no constitutional impediment. Even the dissent in that case, which would have substantively ruled on the merits of the issue, took care to “avoid the constitutional dispute and resolve this case on the statutory question alone” and that “. . . the question is the meaning of the statute enacted in 1929.”¹⁸ H.R. 7109 amends that very statute to explicitly exclude noncitizens from the apportionment base.

Finally, it should be noted that the framers very clearly envisioned a President who would enforce the laws, and did not contemplate a President who so undermined the rule of law that the “one person, one vote” principle would be undermined through his actions. It is explicitly written in Article II, Section 3 of the Constitution that “. . . he shall take Care that the Laws be faithfully executed . . .”¹⁹ President Biden has failed to faithfully execute the laws of the United States, including various provisions of the Immigration and Nationality Act, and by his actions has undermined border security, national security, and created a dangerous and lawless environment at the border and throughout the United States. In addition to failing to enforce the law against millions of illegal aliens, President Biden has abused limited statutory authority to parole into the country inadmissible aliens—for significant public benefit or urgent humanitarian reasons—millions of illegal aliens who will take up residence in the United States. Absent the passage of H.R. 7109 into law, these millions of illegal aliens will be counted for purposes of apportionment, erode the “one person, one vote” principle, and reward a President who has placed illegal aliens and desire for a politically strategic advantage for his party in the electoral college over his constitutional duty to take care to faithfully execute the laws of the United States. By passing H.R. 7109, representation will be returned to the citizens of the United States.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

The short title is the “Equal Representation Act”

Section 2. Citizenship status on decennial census

Subsection (a) amends Section 114 of title 13, U.S. Code to direct the Secretary of Commerce to include on the 2030 decennial census questionnaire (and for any subsequent census) a question for the respondent to indicate for the respondent and each member of the household, whether that individual is a citizen of the United States. It also directs the Secretary of Commerce to publish the number of individuals per State, disaggregated by citizens of the

¹⁷ *Trump v. New York*, 592 U.S. ____ (2020).

¹⁸ *Id.* (Bryer, J., dissenting).

¹⁹ U.S. Constitution, Article II, § 3.

United States and noncitizens, within 120 days of completing each decennial census.

Section 3. Exclusion of noncitizens from number of persons used to determine apportionment of representatives and number of electoral votes

Subsection (a) amends section 2a(a) of title 2, U.S. Code (Reapportionment of Representatives), to require the President to transmit to Congress a statement showing the whole number of persons in each State and the number of Representatives to which each State would be entitled under apportionment, to exclude “individuals who are not citizens of the United States” from such apportionment.

Subsection (b) states that the amendment made by subsection (a) shall apply with respect to the apportionment of Representatives carried out pursuant to the decennial census conducted during 2030 and any succeeding decennial census.

Section 4. Severability clause

States if any provision of this Act or amendment made by this Act, or the application thereof to any person or circumstance, is held to be unconstitutional, the remainder of the provisions of this Act and amendments made by this Act, and the application of the provision or amendment to any other person or circumstance, shall not be affected.

LEGISLATIVE HISTORY

H.R. 7109, the Equal Representation Act, was introduced on January 29, 2024, by Representative Chuck Edwards. The following Representatives are cosponsors of the bill: Warren Davidson (R-OH), Andrew Ogles, (R-TN), Gus Bilirakis (R-FL), Jeff Duncan (R-SC), Russell Fry (R-SC), Glenn Grothman (R-WI), Scott DesJarlais (R-TN), William Timmons (R-SC), Keith Self (R-TX), John R. Curtis (R-UT), Mary Miller (R-IL), Bill Posey (R-FL), Aaron Bean (R-FL), Barry Moore (R-AL), John W. Rose (R-TN), Laurel M. Lee (R-FL), Randy K. Weber (R-TX), Debbie Lesko (R-AZ), Mike Collins (R-GA), Garret Graves (R-LA), Brian Babin (R-TX), Alexander X. Mooney (R-WV), Carol D. Miller (R-WV), Charles J. “Chuck” Fleischmann (R-TN), August Pfluger (R-TX), Thomas P. Tiffany (R-WI), Kevin Hern (R-OK), Brad Finstad (R-MN), Dusty Johnson (R-SD), Tony Gonzales (R-TX), Randy Feenstra (R-IA), Paul Gosar (R-AZ), Kat Cammack (R-FL), Ben Cline (R-VA), Doug LaMalfa (R-CA), Cory Mills (R-FL), Mike Bost (R-IL), Jim Banks (R-IN), Dale Strong (R-AL), Eric Burlison (R-MO), Erin Houchin (R-IN), Dan Bishop (R-NC), Michael Guest (R-MS), Robert E. Latta (R-OH), Richard McCormick (R-GA), Andy Biggs (R-AZ), Elijah Crane (R-AZ), Guy Reschenthaler (R-PA), David Rouzer (R-NC), Pete Sessions (R-TX), Ralph Norman (R-SC), John R. Carter (R-TX), Lance Gooden (R-TX), Stephanie Bice (R-OK), John R. Moolenaar (R-MI), Troy Balderson (R-OH), Scott Fitzgerald (R-WI), Bruce Westerman (R-AR), Jim Jordan (R-OH), Roger Williams (R-TX), Troy E. Nehls (R-TX), Doug Lamborn (R-CO), Rudy Yakym (R-IN), Josh Brecheen (R-OK), Tracey Mann (R-KS), Mike Garcia (R-CA), Marjorie Taylor Greene (R-GA), Rick W. Allen (R-GA), Nathaniel Moran (R-TX), Scott C. Franklin (R-FL), Pat Fallon (R-

TX), Ashley Hinson (R-IA), Larry Bucshon (R-IN), Bob Good (R-VA), Clay Higgins (R-LA), Max L. Miller (R-OH), Lisa C. McClain (R-MI), Harriet M. Hageman (R-WY), Sam Graves (R-MO), Gary Palmer (R-AL), Adrian Smith (R-NE), Nicholas A. Langworthy (R-NY), Mike Flood (R-NE), Diana Harshbarger (R-TN), Andrew S. Clyde (R-GA), Brad R. Wenstrup (R-OH), Mark E. Green (R-TN), Ann Wagner (R-MO), Michelle Fischbach (R-MN), Byron Donalds (R-FL), W. Gregory Steube (R-FL), Lauren Boebert (R-CO), Daniel Meuser (R-PA), Wesley Hunt (R-TX), Neal P. Dunn (R-FL), Matthew M. Rosendale (R-MT), Nancy Mace (R-SC), Michael Cloud (R-TX), Ron Estes (R-KS), Ronny Jackson (R-TX), Burgess Owens (R-UT), James Comer (R-KY), Bill Huizenga (R-MI), Steve Scalise (R-LA), Chip Roy (R-TX), Claudia Tenney (R-NY), Anthony D'Esposito (R-NY), Barry Loudermilk (R-GA), Andy Barr (R-KY), Andy Harris (R-MD), Jake LaTurner (R-KS), Bryan Steil (R-WI), and Darin LaHood (R-IL). The bill was referred to the Committee on Oversight and Accountability. The Committee on Oversight and Accountability held a legislative hearing on January 17, 2024. The Committee considered H.R. 7109 at a business meeting on April 10, 2024, and ordered the bill as amended favorably reported by a recorded vote.

COMMITTEE CONSIDERATION

On April 10, 2024, the Committee met in open session and ordered the bill, H.R. 7109, favorably reported with an amendment in the nature of a substitute, by a roll call vote of 22–20, a quorum being present.

ROLL CALL VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following roll call vote occurred during the Committee's consideration of H.R. 7109:

The roll call vote was on final passage of H.R. 7109. The bill was agreed to in a recorded vote of 22–20.

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY
 118TH CONGRESS
 RATIO 26-21
 ROLL CALL

Vote on: Final Passage – H.R. 7109, Equal Representation Act
 Date: 4/10/2024

VOTE #: 1

| Republicans | Aye | No | Present | Democrats | Aye | No | Present |
|-------------------------------------|-----|----|---------|--|-----|----|---------|
| MR. COMER (KY) <i>(Chairman)</i> | X | | | MR. RASKIN (MD) <i>(Ranking Member)</i> | | X | |
| MR. JORDAN (OH) | X | | | MS. NORTON (DC) | | X | |
| MR. TURNER (OH) | | | | MR. LYNCH (MA) | | X | |
| MR. GOSAR (AZ) | X | | | MR. CONNOLLY (VA) | | X | |
| MS. FOXX (NC) | X | | | MR. KRISHNAMOORTHY (IL) | | X | |
| MR. GROTHMAN (WI) | X | | | MR. KHANNA (CA) | | X | |
| MR. CLOUD (TX) | X | | | MR. MFUME (MD) | | | |
| MR. PALMER (AL) | X | | | MS. OCASIO-CORTEZ (NY) | | X | |
| MR. HIGGINS (LA) | X | | | MS. PORTER (CA) | | X | |
| MR. SESSIONS (TX) | X | | | MS. BUSH (MO) | | X | |
| MR. BIGGS (AZ) | X | | | MS. BROWN (OH) | | X | |
| MS. MACE (SC) | | | | MS. STANSBURY (NM) | | X | |
| MR. LATURNER (KS) | X | | | MR. GARCIA (CA) | | X | |
| MR. FALLON (TX) | X | | | MR. FROST (FL) | | X | |
| MR. DONALDS (FL) | X | | | MS. LEE of PENNSYLVANIA (PA) | | X | |
| MR. PERRY (PA) | X | | | MR. CASAR (TX) | | X | |
| MR. TIMMONS (SC) | X | | | MS. CROCKETT (TX) | | X | |
| MR. BURCHETT (TN) | X | | | MR. GOLDMAN (NY) | | X | |
| MS. GREENE OF GEORGIA (GA) | X | | | MR. MOSKOWITZ (FL) | | X | |
| MRS. MCCLAIN (MI) | X | | | MS. TLAIB (MI) | | X | |
| MRS. BOEBERT (CO) | | | | MS. PRESSLEY (MA) | | X | |
| MR. FRY (SC) | X | | | | | | |
| MRS. LUNA (FL) | X | | | | | | |
| MR. LANGWORTHY (NY) | X | | | | | | |
| MR. BURLISON (MO) | X | | | | | | |
| MR. WALTZ (FL) | | | | | | | |

Roll Call Totals: Ayes: 22 Nays: 20 Present: _____
 Passed: X Failed: _____

EXPLANATION OF AMENDMENTS

During Committee consideration of the bill, Representative James Comer (R-KY), Chairman of the Committee, offered an amendment in the nature of a substitute that would make certain technical changes to the bill. The amendment in the nature of a substitute passed by voice vote.

LIST OF RELATED COMMITTEE HEARINGS

In accordance with House rule XIII, clause 3(c)(6), (1) The following hearing was used to develop or consider H.R. 7109:

On January 17, 2024, the Committee held a hearing titled “The Biden Administration’s Regulatory and Policymaking Efforts to Undermine U.S. Immigration Law” with Mr. David Bier, Associate Director of Immigration Studies, Cato Institute; Mr. Joseph Edlow, Former Acting Director and Chief Counsel, U.S. Citizenship and Immigration Services, Founder, Edlow Group LLC; and Mr. Tom Homan, Former Acting Director, U.S. Immigration and Customs Enforcement.

(2) The following related hearing was held:

On February 7, 2023, the Committee held a hearing titled “On The Front Lines of the Border Crisis: A Hearing with Chief Patrol Agents” with Ms. Gloria Chavez, Chief Patrol Agent, U.S. Border Patrol Rio Grande Valley Sector; and Mr. John Modlin, Chief Patrol Agent, U.S. Border Patrol Tucson Sector.

(3) The following related hearing was held:

On March 8, 2023, the Subcommittee on National Security, the Border, and Foreign Affairs held a hearing titled “Force Multipliers: Examining the Need for Additional Resources to Disrupt Transnational Crime at the Border and Beyond” with Ms. Diane Sabatino, Deputy Executive Assistant Commissioner, Office of Field Operations/U.S. Customs and Border Patrol; and Mr. Anthony Salisbury, Deputy Executive Associate Director, Homeland Security Investigations/U.S. Immigration and Customs Enforcement.

(4) The following related hearing was held:

On June 6, 2023, the Subcommittee on National Security, the Border, and Foreign Affairs held a hearing titled “Help Wanted: Law Enforcement Staffing Challenges at the Border” with The Honorable Joseph Cuffari, Inspector General, Department of Homeland Security.

(5) The following related hearing was held:

On August 8, 2023, the Subcommittee on National Security, the Border, and Foreign Affairs held a joint field hearing titled “Biden’s Border Crisis and its Effect on American Communities” with Mr. Andrew “Art” Arthur, Resident Fellow in Law and Policy, Center for Immigration Studies; Mr. Mark Dannels, Sheriff, Cochise County; and Mr. John W. Ladd, Rancher.

(6) The following related hearing was held:

On February 15, 2024, the Subcommittee on National Security, the Border, and Foreign Affairs held a hearing titled “The Consequences of Catch and Release at the Border” with Mr. Jason Houser, Former Chief of Staff, U.S. Immigration and Customs Enforcement; Mr. Matt O’Brien, Director of Investigations, Immigra-

tion Reform Law Institute; and Ms. Jessica Vaughan, Director of Policy Studies, Center for Immigration Studies.

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. Code to add a citizenship inquiry to the decennial census and exclude noncitizens from the apportionment base.

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 3(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 STATEMENT

The Committee finds that this legislation does not direct the establishment of advisory committees within the definition of Section 5(b) of the appendix to title 5, U.S.C.

UNFUNDED MANDATES REFORM ACT STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the *Unfunded Mandates Reform Act*.

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 COST ESTIMATE

Pursuant to clause 3(d)(1) of rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the *Congressional Budget Act of 1974*. At the time this report was filed, the estimate was not available.

NEW BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

Pursuant to clause 3(c)(2) of rule XIII, the Committee finds that H.R. 7109 would result in no new or increased budget authority.

Pursuant to clause 3(c)(3) of rule XIII of the House of Representatives, at the time this report was filed, the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the *Congressional Budget Act of 1974* was not available.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

The requirements of clause 3(e) of rule XIII of the Rules of the House of Representatives apply to H.R. 7109.

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 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)(1) In conducting the 2030 decennial census and each decennial census thereafter, the Secretary shall include in any questionnaire distributed or otherwise used for the purpose of determining the total population by States a checkbox or other similar option for the respondent to indicate, for the respondent and for each of the members of the household of the respondent, whether that individual is a citizen of the United States.

(2) Not later than 120 days after completion of a decennial census of the population under subsection (a), the Secretary shall make publicly available the number of individuals per State, disaggregated by citizens of the United States and noncitizens, as tabulated in accordance with this section.

[(g)] *(h) As used in this section, "census of population" means a census of population, housing, and matters relating to population and housing.*

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ACT OF JUNE 18, 1929

(Public Law 71-28)

AN ACT To provide for the fifteenth and subsequent decennial censuses and to provide for apportionment of Representatives in Congress.

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SEC. 22. (a) On the first day, or within one week thereafter, of the first regular session of the Eighty-second Congress and of each fifth Congress thereafter, the President shall transmit to the Congress a statement showing the whole number of persons in each State, excluding Indians not taxed *and individuals who are not citizens of the United States*, as ascertained under the seventeenth and each subsequent decennial census of the population, and the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives by the method known as the method of equal proportions, no State to receive less than one Member.

(b) Each State shall be entitled, in the Eighty-third Congress and in each Congress thereafter until the taking effect of a reapportionment under this section or subsequent statute, to the number of

Representatives shown in the statement required by subsection (a) of this section no State to receive less than one Member. It shall be the duty of the Clerk of the House of Representatives, within fifteen calendar days after the receipt of such statement, to send to the executive of each State a certificate of the number of Representatives to which such State is entitled under this section. In case of a vacancy in the office of Clerk, or of his absence or inability to discharge this duty, then such duty shall devolve upon the Sergeant at Arms of the House of Representatives.

(c) Until a State is redistricted in the manner provided by the law thereof after any apportionment, the Representatives to which such State is entitled under such apportionment shall be elected in the following manner: (1) If there is no change in the number of Representatives, they shall be elected from the districts then prescribed by the law of such State, and if any of them are elected from the State at large they shall continue to be so elected; (2) if there is an increase in the number of Representatives, such additional Representatives or Representatives shall be elected from the State at large and the other Representatives from the districts then prescribed by the law of such State; (3) if there is a decrease in the number of Representatives but the number of districts in such State is equal to such decreased number of Representatives, they shall be elected from the districts then prescribed by the law of such State; (4) if there is a decrease in the number of Representatives but the number of districts in such State is less than such number of Representatives, the number of Representatives by which such number of districts is exceeded shall be elected from the State at large and the other Representatives from the districts then prescribed by the law of such State; or (5) if there is a decrease in the number of Representatives and the number of districts in such State exceeds such decreased number of Representatives, they shall be elected from the State at large.

MINORITY VIEWS

Ex-President Trump already tried to include a citizenship question on the decennial census in 2020, and the effort failed both administratively and legislatively—for obvious reasons. Section 2 of 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,”—persons is the all-encompassing category larger than *citizens* or *voters*, a point made clearly and emphatically by the Supreme Court in its 2016 decision in *Evenwel v. Abbott*.

Like this legislation itself, *Evenwel* involved a challenge to congressional apportionment based on a total count of the *entire* population instead of a total count of the *voter* population. But Justice Ginsburg held for a unanimous Court that Section 2 of the 14th Amendment “retained total population as the congressional apportionment base.” She cited the speech made by Senator Jacob Howard upon introduction of Section 2 of the 14th Amendment:

The basis of representation is numbers . . . ; The committee adopted numbers as the most just and satisfactory basis, and this is the principle upon which the Constitution itself was originally framed, that the basis of representation should depend upon numbers; and such, I think, after all, is the safest and most secure principle upon which the Government can rest. Numbers, not voters; numbers, not property; this is the theory of the Constitution.¹

Justice Ginsburg cited much decisive legislative authority like this, including the floor statement of Representative James G. Blaine, who stated that “no one will deny that population is the true basis of representation; for women, children, and other non-voting classes may have as vital an interest in the legislation of the country as those who actually deposit the ballot.”²

The plain reading of the text is clear as day, and the original purposes have been carefully articulated and never rebutted. For those who like to follow precedent, every apportionment since 1790 has included every single person residing in the United States, not just those lucky enough to have been given the right to vote. As the *Evenwel* Court noted, the 14th Amendment contemplates that “representatives serve all residents, not just those eligible to vote.”³

This month the Census Bureau released a report that estimated the number of foreign-born residents in the United States is 46

¹ Congressional Globe, 39th Cong., 1st Sess., pp. 2766–2767 (1866) (online at <https://memory.loc.gov/cgi-bin/ampage?collId=llcg&fileName=072/llcg072.db&recNum=848>).

² *Evenwel v. Abbott*, 578 US ___ (2016).

³ *Id.*

million. Fifty-three percent of those residents are naturalized. That means this bill would leave more than 20 million U.S. residents uncounted and ignored. A population that has a higher labor force participation rate than the native-born population. These people are paying taxes and contributing to the economic well-being of the nation. It is unacceptable that these individuals should not be represented.⁴

The constitutional meaning is indisputable, a point which settles this for those who want to follow the Constitution's plain text and original public meaning today. This bill will never pass the Senate or get signed by the President and is an insult to the great Radical Republicans who wrote the 14th Amendment. Their party was a pro-freedom, pro-Union, pro-immigrant party.

The census is essential to democracy. Just as the Framers endorsed Thomas Paine's *Common Sense*, they also endorsed a common census. But this bill would destroy the accuracy of the census, which may have something to do with the actual legislative purpose. In the 2010 Census, the undercount of Hispanics was 1.4%. In 2020 that number grew to 5%. Many observers credit that increase to the Trump Administration's *attempt* to add a citizenship question to the census and all of the intense publicity and rumor surrounding that attempt.

The addition of a question about citizenship will deter many immigrants—not only the undocumented but persons with green cards or other forms of lawful status—from completing the census. Many non-citizen immigrants who are seeking asylum or are refugees will avoid responding because of uncertainty over their status and fear of arbitrary law enforcement action.

Extensive research over the last decade shows that many residents wrongly believe the Census Bureau shares personal responses with other federal agencies. It does not, and Census Bureau employees take an oath to protect the confidentiality of personal information. Federal law prohibits the sharing of personal information in this way, but that pervasive worry has prevented some individuals from answering questions about immigration status or responding to the census at all.

Census data guide the allocation of \$2.8 trillion each year in federal assistance to states, localities, and families for a broad range of vital services. An inaccurate census would skew the fair distribution of federal resources for the next decade and deprive cities and towns of needed resources for everything from roads to hospitals and veterans' care.

I strongly oppose this legislation, which dishonors our Constitution and the values of our nation.

JAMIE RASKIN,
Ranking Member.



⁴U.S. Census Bureau, *The Foreign-Born Population in the United States: 2022* (Apr. 2024) (online at www2.census.gov/library/publications/2024/demo/acsbr-019.pdf).