

Citizenship and Partisan Gerrymandering: US Supreme Court Ruling on Census Could Deal Grave Blow to Democracy

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The Supreme Court is poised to decide two cases that could prove devastating to the right to vote — the very foundation of a democracy. One case will review the Trump administration’s attempt to add a citizenship question to the 2020 census. The other will consider whether partisan gerrymandering is constitutional. They are related because the citizenship question would “allow Republicans to draft even more extreme gerrymandered maps to stymie Democrats,” the New York Times [reported](#).

“It’s hard to overstate the significance of the census and partisan gerrymandering cases,” [according](#) to Professor Leah Litman of UC Irvine School of Law, interviewed in the *Los Angeles Times*.

“Upholding the addition of the citizenship question and foregoing any judicial oversight of partisan gerrymandering would allow Republican minorities to entrench their political power for decades.”

Moreover, Thomas Hofeller, a GOP strategist and architect of the citizenship question plan, was known as the “Michelangelo of gerrymandering.” Hofeller’s expertise in drawing partisan political maps “cemented the [Republican] party’s dominance across the country,” Michael Wines [wrote](#) in the *New York Times*.

Uncompromised, uncompromising newsThe census is used to determine the number of representatives each state will have in the House, how electors are distributed in the electoral college, and how \$880 billion in federal funds will be allocated between the states.

The Census Citizenship Question

In December 2017, the Department of Justice (DOJ) wrote a [letter](#) to the Commerce Department, requesting that it add a citizenship question to the questionnaire for the 2020 Census. But Commerce Secretary Wilbur Ross had already decided to add the question and he [orchestrated](#) the letter to make it look like he was responding to a DOJ request.

Ross [testified](#) before Congress last March that the purpose of the addition was to obtain “complete and accurate information for use in determining citizen age voting populations to enforce the Voting Rights Act.” Rep. Elijah Cummings, chair of the House Committee on Oversight and Government Reform, [pointed out](#) the hypocrisy of Ross’s claimed rationale, saying the Trump administration has done “everything in its power to suppress the vote.”

A coalition of states, counties and cities are claiming in [Department of Commerce v. New York](#) that the addition of the question is unconstitutional. They assert it would cause a significant undercount because people in households with undocumented individuals would be deterred from responding.

Indeed, the Census Department [estimated](#) that 6.5 million people could remain uncouned if the citizenship question were added.

In January, a federal district court in New York blocked the government from adding the citizenship question. The district court found that Ross's decision was arbitrary and capricious, calling his Voting Rights Act (VRA) rationale a "[pretext](#)" for a motive other than VRA enforcement. But the court said that the plaintiffs hadn't demonstrated that the purpose of the question was to discriminate against Latinos and other immigrant communities of color, which is required for a violation of the equal protection component of the Fifth Amendment's Due Process Clause.

[The Fourteenth Amendment](#) says, "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." The amendment does not limit the count to citizens.

During oral arguments in the Supreme Court in April, the conservative justices [seemed inclined](#) to uphold the citizenship question. But on May 30, the Court was presented with newly discovered [evidence of a cover-up](#) of the illegal racist motive for adding the citizenship question. After Hofeller died in 2018, his daughter found documents showing that he urged inclusion of the question to "be a disadvantage to the Democrats" and "advantageous to Republicans and Non-Hispanic Whites" in redistricting.

Accordingly, on June 13, the coalition plaintiffs asked the Supreme Court to delay ruling in the case. Dale Ho, director of the ACLU's Voting Rights Project, who represents the plaintiffs, [said](#),

"The significance of this case cannot be overstated. The census happens once a decade and there is no chance for a do-over." He added, "The Supreme Court should not permit the Trump administration to add a citizenship question to the census based on an incomplete and misleading record."

Meanwhile, the House Oversight and Reform Committee recommended to the full House of Representatives that Ross and Attorney General William Barr be held in contempt of Congress for refusing to provide testimony and documents relating to the census question. A few hours before the committee vote, Donald Trump [retaliated](#) by asserting executive privilege to block the subpoenaed material.

The Partisan Gerrymandering Cases

[Gerrymandering](#) is "the intentional manipulation of district boundaries to discriminate against a group of voters on the basis of their political views or race."

Although the Supreme Court has struck down racial gerrymandering, it has never agreed on a standard for assessing the constitutionality of partisan gerrymandering.

Both political parties engage in partisan gerrymandering. But Republicans currently benefit from it more. This is largely due to their successes in the 2010 congressional election, which enabled them to redraw House district boundaries to advantage Republicans. They also used other strategies for voter suppression, including voter ID requirements and limited voting hours and locations.

Vicky Hausman, co-founder of Forward Majority, an organization geared toward helping Democrats win back state legislatures, [listed](#) in the *Los Angeles Times* several voter suppression tactics the GOP has utilized. They include trying to impeach judges who challenge gerrymandered maps, stripping power from newly elected Democratic governors, overturning voter ballot initiatives, passing voter suppression laws, and gerrymandering.

The Supreme Court will decide two cases involving partisan gerrymandering by the end of June. One challenges gerrymandering by Republicans, the other by Democrats.

In [Rucho v. Common Cause](#), plaintiffs allege that North Carolina's Republican legislative leadership drew a congressional map in order to entrench long-term Republican majorities. Even though they only won about 50% of the popular vote, Republicans still gained a majority of available seats in the 2018 Midterm elections by an extreme margin of 10-3.

A three-judge district court overturned the congressional plan drawn by the North Carolina legislature to replace a prior plan that courts had struck down as racial gerrymandering. The district court found the replacement plan violated the Equal Protection Clause, the First Amendment and Article I of the Constitution. The Supreme Court will review that decision.

[Benesik v. Lamone](#) involves a Republican challenge to the configuration of the Sixth Congressional District in Maryland. The plaintiffs allege that Democratic lawmakers violated the First Amendment's freedom of political association by intentionally utilizing voters' histories and party affiliations to move large numbers of Democratic voters into the district and large numbers of Republican voters out.

A three-judge panel of the appellate court granted the plaintiffs' request for a permanent injunction against the electoral map. The Supreme Court will decide whether to uphold that injunction and rule that the Democrats' partisan gerrymandering is unconstitutional.

Justices Ginsburg, Breyer, Kagan and Sotomayor have indicated a willingness to [clamp down](#) on partisan gerrymandering. On the other hand, Justices Thomas, Alito and Gorsuch oppose federal limits on partisan gerrymandering. Kavanaugh hasn't ruled on a major gerrymandering case but his record on voting rights is [disturbing](#). And Chief Justice Roberts has called standards for measuring the impact of partisan gerrymandering "[sociological gobbledygook](#)."

If the Supreme Court refuses to strike down districts for partisan gerrymandering, it will be up to the state courts to hear challenges based on violations of state legislation and constitutions. But enforcement will be spotty and partisan gerrymandering will continue in many states.

From [Shelby County v. Holder](#), which invalidated critical provisions of the Voting Rights Act, to [Citizens United v. FEC](#), which allows unlimited money in elections, the high court has been steadily diluting voting rights. The census citizenship question and concomitant partisan gerrymandering by the GOP pose additional threats to the right to vote, and

indeed, to democracy itself.

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