

Why Trump Is Dead Wrong About the Census

By [Eric Zuesse](#)

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*U.S. **President Donald Trump** is trying to add to the U.S. Census a question as to whether the respondent is a U.S. citizen, but that would be illegal for him to do, at present, and not because the U.S. Supreme Court has ruled on the matter (which it really hasn't yet), but because the U.S. Constitution itself states in clear and unambiguous terms that he can't do any such thing, and because no President in U.S. history has even tried to do it without having received prior explicit authorization from the Congress to do it (which is what Trump is trying to do — do it without an act of Congress) — perhaps all of them who preceded Trump had (as Trump seems not to have) read the Constitution, which makes unambiguously clear that they're simply not allowed to add any new question, unless a law has been passed allowing him/her to.*

The first lengthy clause in the U.S. Constitution (and there are only three clauses in it that are lengthy) comes almost immediately after the Preamble, and it is quite explicit that the only way in which a change to the questions in the U.S. Census can be made, is by an act of Congress, passed by the Congress, and signed into law by the President. For example, the third U.S. Census was taken in 1810, and it was the very first Census in which new questions had been added (to the three then-existing ones, which had been asked ever since the first Census, in 1790). As the [U.S. Census Bureau explains on its website](#),

“In addition to population inquiries, the 1810 census was the first to collect data about the nation's manufactures. A May 1, 1810, act directed that, ‘it shall be the duty of the several marshals, secretaries, and their assistants aforesaid, to take, under the direction of the Secretary of the Treasury, and according to such instructions as he shall give, an account of the several manufacturing establishments and manufactures within their several districts, territories, and divisions.’ The act did not outline specific questions or prescribe a schedule, leaving those matters to the Secretary of the Treasury's discretion.”

Here, then, is that complete Clause in the U.S. Constitution (and I **boldface** key phrases):

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. 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**. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three,

Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut, five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

Consequently, for example, persons in prison are to be counted in the Census, and are to be asked the questions that have been authorized to be included in it.

There is no authorization, in the Constitution, to exclude a person from any count on the basis of his/her citizenship status. It's not a count of citizens. It is a count of persons. (Sometimes the term "residents" has been used as a synonym for that.) The phrase in the Constitution "three fifths of all other persons" was referring to slaves; but those were outlawed to exist since the Civil War — and even they had been counted as 60% of a "person."

Of course, adding a question about the respondent's citizenship might not be intended for ferreting out non-citizens in order to deport them — it might merely be aimed at causing them to fear, in order to discourage them from exercising whatever legal rights they have. The recent Supreme Court ruling concerned only what the *motive* behind the Trump Administration's policy on this was, but the far more basic issue here isn't motive; it's whether the Executive Branch can add any questions, at all, without explicit congressional authorization to do so; and the answer to that is simple: No.

Trump is so stupid that on July 5th he himself publicly admitted that at least one reason why he wanted the citizenship question to be included on the census-questionnaire is in order to provide a basis for eliminating non-citizens from the census-counts, or perhaps eliminating from the country millions of potential Democratic voters — that it was precisely what the complainant in the suit had alleged. [Trump said](#):

"Number one, you need it for Congress — you need it for Congress for districting. You need it for appropriations — where are the funds going? How many people are there? Are they citizens? Are they not citizens? You need it for many reasons."

Excluding a person from such counts for the purposes of determining electoral outcomes is not permitted under the existing U.S. Constitution. But he's not trying to get the Constitution amended so as to allow that; he's simply ignoring the Constitution, altogether.

Trump obviously thinks he possesses legal authorization to add citizenship questions, just by his diktat. That's blatantly unConstitutional. He ought to read the Constitution. After all, he swore an oath to adhere to it — not to ignore it. After the Supreme Court issued its preliminary [ruling on June 27th](#), Trump said, on July 5th, "[we're working on a lot of things including an executive order](#)" to do this entirely without Congress. The Court on July 27th hadn't told him straightforwardly "It's not an Executive matter; you possess no authority over it; this is a matter for the Legislative branch, the Congress, not for the Executive branch, the President." The way they had avoided that was by their noting that the 1976 Amendment to the Census Act asserted that Congress was "authorizing the Secretary [of Commerce, now Trump's major donor and friend, Wilbur Ross] [to take the decennial census in whatever form and content he determines](#)" — as if the Executive branch is now free to add questions to the Census even if Congress hasn't explicitly allowed it. Maybe Trump is

hoping that the Supreme Court will allow him to break all precedent, and to violate the Constitution's clear meaning, and to take over this matter as being, from now on, an Executive branch authority and power — and to hell with what the Constitution says about it. Well, if this country has [already become a dictatorship](#), that approach might succeed, but then the Constitution itself would be totally dead. We might as well then disband the Congress, and let the President himself take direct control over the Supreme Court. Is the country actually coming to that? This is what is at stake here. But that tactic wouldn't work right now, because the Democratic-majority House of Representatives won't allow the Republican President to violate the Constitution in a way that jeopardizes their own re-elections. Trump right now is operating in a face-saving mode, even if he's so stupid as not to know this.

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Investigative historian **Eric Zuesse** is the author, most recently, of [They're Not Even Close: The Democratic vs. Republican Economic Records, 1910-2010](#), and of [CHRIST'S VENTRILOQUISTS: The Event that Created Christianity](#).

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About the author:

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