The same day Commerce Secretary Wilbur Ross announced his plan to add a question about citizenship to the 2020 census California filed a complaint seeking an injunction preventing the question from being added. The next day New York Attorney General Eric Schneiderman announced he would lead a multi-state lawsuit challenging the question.

In December 2017 the Department of Justice (DOJ) requested that a question about citizenship be added to help DOJ more effectively enforce Section 2 of the Voting Rights Act, which prohibits discrimination on the basis of race in voting. Citizenship has not been asked about in the biennium census since 1950.

While the details of the multi-state lawsuit are unknown as no complaint has yet been filed, California’s allegations are spelled out in its 12-page complaint.

The U.S. Constitution requires an “actual Enumeration” of all people to apportion congressional seats. Census data is also used to distribute billions of dollars in federal funding to the states and local governments.

As a practical matter California is concerned that a question about citizenship will “repress responses from non-citizens and their citizen relatives.” California claims it has more foreign-born residents (over 10 million) and non-citizens (over 5 million) than any other state. “Undercounting the sizeable number of California non-citizens and their citizen relatives will imperil the State’s fair share of congressional seats and Electoral College electors and will cost the State billions of dollars in federal funding over the next decade.” California asserts inclusion of this question will likely cause it to lose congressional seats for the first time in its history.

California makes two legal argument against adding a citizenship question to the census. First, California claims that adding this question violates the “actual Enumeration” clause of the Constitution. “Inclusion of the question . . . directly interferes with [the federal government’s] fulfillment of [it’s] constitutional responsibility, as delegated by Congress, to conduct an ‘actual Enumeration’ of the U.S. population.”

Second, California claims that the decision to add a question about citizenship violates the Administrative Procedures Act which prohibits federal agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” “contrary to constitutional right, power, privilege or immunity,” or “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” California claims that inclusion of the citizenship question is “all of the above.”

California also argues that an undercount will decrease the accuracy of census data available to prove vote dilution under Section 2 of the Voting Rights Act.

Secretary Ross has not yet had a chance to respond to California’s complaint. Census paper questionnaires should be finalized for printing by May 2019.
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