

To: Congress of the United States, House of Representatives,
Committee on Oversight and Reform
From: the Honorable Kenneth Prewitt, July 25, 2020.

Oral presentation: July 29, 2020

Madam Chairwoman & Members of the Committee

I make five points and one recommendation.

FIRST. There is a difference between an election and a census. Elections are about getting more votes than your opponent. This works whether voter participation is 100% or 10%. At 10% the election still did its job – putting this and not that person in office.

This does not work for a census. It doesn't care if red states are more completely counted than blue states, or vice versa. It only cares if final census numbers represent 100% of the population, or very close to it. At present the Census Bureau has two Deputy Directors, one of whom is much more expert in elections than in census-taking. From a distance, he seems to treat the census as if it were an election. Working to get more red than blue states, ignoring what this implies for data quality – the census goal. I will apologize if facts surface otherwise, but the burden is on Mr. Cogley.

SECOND POINT. The census self-reporting phase successfully reached 62% of the population. An achievement to applaud. But the next phase is orders of magnitude more difficult. We're in the NRFU/ Hard-to-count territory. COVID-19 is more in control than the White House, Congress, or even the experienced professionals at the Bureau. Given this blunt fact, the four-month extension, now in limbo, is necessary. Without it, the odds of a successful census are low, and trending down.

THIRD POINT. How do I define a successful census? Easy - census numbers have specified purposes. The Bureau will know – as no other unit of the government

can – if its numbers will accurately reapportion and fairly distribute federal funds for a decade. It knows that the census count is the denominator of every vital statistic we rely upon, whether it's the number of consumer prospects for a new business, the differential rate of infection across population subgroups in the pandemic, or disparities in the arrest rates across racial groups. These numbers have a 10-year life.

FOURTH POINT. The Bureau not only knows these statistical facts, it knows the amount of damage that sub-standard numbers will inflict on society. It is not pretty – ten years of homeless veterans because their hospitals are mis-located; ten years of tropical storm disaster relief that is too little and too late because traffic congestion is underestimated; ten years of poor planning by local school districts because they have flawed estimates of how many 1st graders are going to show up; ten years of misled Chambers of Commerce because predictions of population growth and characteristics were off base.

Fifth POINT. The Bureau **will not want to inflict that damage**. It is too honorable, too scientific, too proud of its professional standards, too faithful to its constitutional duties. The Bureau will struggle with the enormous burden of whether to **release sub-standard results**.

I urge the Congress to share that burden. Task a suitable independent institution - the National Academy of Sciences, or any apolitical and trusted institution of its choosing -- to produce *predetermined quality metrics* that can assess if the final 2020 numbers reasonably match what the Bureau knows they should be. And if not, what steps the country should take.

Written Testimony

Political Interference in the Census

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Article 1, Section 2, of the Constitution directs that the actual census enumeration be taken every ten years “in such Manner as [Congress] shall by Law direct.” Because Congress is composed of the politically ambitious, it is no surprise that it has argued over the census. It was so from the first census, with its three-fifths clause advantaging slave-holding states. Since then censuses have varied in the degree to which they are shaped as much by politics as science – the 1840 question on whether a person was “insane or idiotic,” which seemed to show (the data were eventually found to be useless) that free blacks were driven to insanity and the enslaved were spared that condition, giving Senator Calhoun ammunition to promote Texas joining the union as a slave-holding state. Or the unwelcomed surprise in 1920 that America had become more urban than rural, sending 13 congressional seats from rural regions to the urbanizing and politically alien northeastern states. The rural-dominated Congress refused to re-apportion – claiming census errors but in fact making a political decision.

These examples from census history, there are many dozens more, tell us that census-taking is simultaneously political and scientific. What, then, constitutes political interference? The census starts with purposes, then becomes production, ending with uses. Purposes and uses are political and belong to the politicians. Production belongs to the census professionals, guardians of the standards necessary for an accurate and fair census. Consider, to defend the country Congress okays a new fighter plane for the Air Force and then, when the plane becomes available, okays its use in a war zone. In between the purpose (national defense) and the use (bombing an enemy target) is, of course, the production of the plane; this is assigned to scientists and engineers, insulated from congressional meddling. So it is with the census. Political interference is restricted to actions that meddle in the scientific production of statistics, for example,

“-- the politically motivated suppression of an agency’s responsibility to offer its best judgment on how to most accurately and reliably measure a given phenomenon,
-- the politically motivated decision to prevent an agency from using state-of-the-art science,
-- the politically motivated insistence on preclearance of a major statistical product that is based on state-of-the-art science.” (Prewitt, 2010)

In 2018, after the census form was cleared by the Congress and was field tested – both standard practices – the Secretary of Commerce instructed the Bureau to add a question on citizenship status. The Bureau knew that it was too late for this; the census was in production. Further, the Bureau knew that adding the question would produce an intense legal battle attracting extensive media coverage, largely negative, which affect census cooperation rates, at about six percent reduction. The Bureau explained all of this to the Secretary, adding that it could produce a more accurate estimate of citizenship status using administrative records. The Bureau was unsuccessful in persuading the Secretary, who insisted that the data were needed for the Voting Rights Act.

As many readers will recall, the issue was litigated. In fact, there were multiple law suits, hundreds of media stories, prolonged congressional hearings, and considerable distraction for the Bureau in the final weeks before the 2000 census was launched. The public vocabulary was loudly, insistently political.

What at first appeared to be a procedural and political fight turned into a made-for-TV movie in the wee hours before the Supreme Court ruled in response to the legal battle that this triggered. The computer hard drives of a deceased Republican gerrymanderer ended up in the hands of a policy think tank as a gift from his estranged daughter. Tucked away in Powerpoints that acknowledged that said files never be public were a slew of materials that confirmed suspicions that the Trump Administration was not interested in upholding the Voting Rights Act, the cover it used in justifying the introduction of a citizenship question. Rather, as these explosive documents showed, a network of Republicans was invested in the citizenship question to strategically and intentionally disenfranchise non-citizens, the same Nativist agenda that helped undermine the census a century ago.

In a surprise reversal from what all experts expected, the Chief Justice reprimanded the Trump Administration and told them to properly justify their need for this question in a legitimate fashion. The response was vicious, with career lawyers asking to be taken off the case because they couldn't properly defend their client, the Supreme Court telling them that they must stay on the case, and a game of musical chairs that has come to define the Trump Administration. Rather than justifying their ask, the

Administration produced an Executive Order, demanding that the Census Bureau use administrative records to assign citizenship to every person in the census. In other words, they wanted their citizenship data, even if it wasn't going to come directly from a question on the census.

The sensitivity of citizenship is profound. Civil rights groups, who have long struggled to get non-citizens and their family members to respond to the required census, encountered a wave of fear within their communities. No amount of promising people that Title 13 would prevent their data from being abused convinces people that participation is without risk. Surveys of attitudes about census privacy revealed stark differences between people based on race, ethnicity, and immigration status. With the 2020 count underway, we are already seeing significant race-based differences in participation. (Bouk and boyd, 2020)

The Administration, however, was not finished with the citizenship issue. There was an unprecedented development in June of 2020, with the census underway. I emphasize that this development is indicative of political interference, but it is too early to assess its actual consequences. The Census Bureau has thousands of employees, only four of whom are political appointees and only one of these, the Director, is a presidential appointee. As is a long-standing practice the political appointees are carefully screened for experience and expertise in federal statistics matters. In the middle of the 2020 census. the White House, without prior consulting the Census Bureau Director, appointed two political appointees to senior positions at the Bureau, holding titles that did not previously exist: Deputy Director for Policy and his Senior Advisor. The individuals chosen have extensive political experience, but thin to non-existent expertise in census-taking. The Commerce Department's Inspector General immediately requested documentation setting forth their suitability, which, a month later, has not been produced. The American Statistical Association sounded an alarm – "The Census Bureau's addition of two political appointees to its top ranks undermines the work of the Census Bureau and federal statistical agencies because of the lack of transparency and justification, as well as the perception—if not reality—of improper political influence." (ASA, 2020)

This alarm was quickly followed by similar statements from multiple professional associations, members of Congress, extensive media coverage – all raising the specter of political interference. The New York Times (Michael Wines, 2020)

quoted Terri Ann Lowenthal, a long-time and deeply informed consultant on census matters: “Their proximity to the director and lack of relevant expertise suggest a thinly veiled effort to interfere in the implementation and outcome of the 2020 census for the administration’s benefit... It’s hard to draw any other conclusion.” Representative Carolyn B. Maloney of New York, the Democratic chair of a House committee overseeing the Bureau, called the appointees “political operatives” chosen by the Trump administration and accused officials of “using the census for political gain.” I described the appointments as “a frightening development.”

My concern is the message being sent to the American people. Even if these appointments are, at the end of the day, politically harmless, the media storm is not harmless. It includes extensive comment claiming that the census is being politically meddled with. A subsequent development again reminded the public that the census can, in principle, be used as a partisan tool. In late July (2020) the White House directed the Commerce Secretary to provide data to the President, for his use in revising the Apportionment count. The President had announced that he will exclude undocumented residents. The courts will rule on whether the 14th amendment makes such action unconstitutional. This has unleashed another media storm and legal argument.

Command Cause, for example, filed a complaint: Trump “purports to break with almost 250 years of past practice by excluding undocumented immigrants” from the apportionment process.... “President Trump’s Memorandum is not an isolated event. Rather, it is the culmination of a concerted effort, stretching back at least five years, to shift the apportionment base from total population to citizen population—a strategy intended, in the words of its chief architect, to enhance the political power of ‘Republicans and non-Hispanic whites’ at the expense of people of color, chiefly Latinos.”

I note this here to comment further on the definition of political interference. The President is focused on the *use*, not production of census information. He is not, then, by my definition, interfering. If he is successful, red states will pick up seven or so congressional seats and electoral college votes. This is the media story. With approximately a third of the population still to be counted, the President is sending a powerful signal that the 2020 census is a partisan tool, greatly complicating the task of a census still in the field. In eroding public trust this message is harmful to the legitimacy of the census.

Six decades ago, Pearl Harbor resulted in the Census Bureau's proactive effort to facilitate the internship of Japanese-American citizens. Every census since, the Bureau repeatedly stresses that "you can trust us; your answers to the census cannot be used to harm you." And every census since, millions of Americans recall that that promise was violated by the 1940 internship. We now risk another long shadow. The citizenship Supreme Court case, the hard to explain political appointments, and now a clear signal of partisan intent similar to the internship in its capacity to cast a long shadow.

Mindful of this, the Bureau has managed the transmittal of apportionment statistics with great care. For 50 years the Bureau has publicly announced the apportionment numbers nearly simultaneously with transmittal to the President (who in turn has immediately made them available to the Congress). In recent years, the public announcement has taken place in the National Press Club, with much fanfare and press coverage. The Bureau is signaling that the American people are the source of the census and have full rights to know the results even as the Administration and Congress are informed. Nothing in census history indicates that the President has private, extended access and the right to change the numbers. It is this that the President is claiming. Its shadow will follow the census as least as long as that caused by the interning of Japanese-Americans.

The current census, by design, is highly visible. It matters if this visibility has even a hint of political interference. The census *viewed* as a partisan tool has an uphill battle in securing public trust. The census *used* as a partisan tool is a damaged census.

American Statistical Association Statement on the June 23 US Census Bureau Appointments June 24, 2020

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