



# The Phyllis Schlafly Report

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## The Census Should Protect Our Citizenship

American citizenship is the most valuable status in the history of the world, worth more than even Roman citizenship was. It is elementary that a census of the people in our country should include in its questions whether someone is a citizen.

Yet asking for that basic information has created a massive firestorm among liberals who want to blur the distinction between those who are American citizens, and those who are not. No one can claim it is an invasion of anyone's privacy to ask about citizenship, given that it should be a matter of public record.

The genteel industrialist who runs the obscure 115-year-old U.S. Department of Commerce appears to be an unlikely person to cause such controversy. Wilbur Ross, who will never light up a room or catch fire on social media while presiding over one of the grandest but least-visited buildings in Washington, holds a position that is considered a backwater in the president's cabinet.

But Secretary Ross has become the most valuable player of the Trump administration. Not only has he provided critical support for the president's America First trade agenda, but he has laid the groundwork for the president's reelection by restoring the citizenship question to the census.

The importance of his decision is shown by the fact that Democrats in California immediately filed a lawsuit asking a federal judge to stop it. Federal judges appointed by Democratic presidents Barack Obama, Bill Clinton and even Jimmy Carter have become the first stop in the resistance to President Trump carrying out the will of the American people who elected him in 2016.

The initial lawsuit against Wilbur Ross was filed by the attorney general of California, Xavier Becerra, who should have his hands full defending his state's unconstitutional sanctuary laws against a federal lawsuit by U.S. Attorney General Jeff Sessions. San Francisco is not only a sanctuary for illegal aliens, but it is also a popular venue for liberals seeking judicial supremacy to block Trump at every turn.

Another lawsuit against Ross is being threatened by Obama's disgraced attorney general Eric Holder, who was found in criminal contempt of Congress for his role in covering up the Fast and Furious scandal. That should have derailed Holder's legal career, but instead it's treated as a badge of honor by those who advocate the alleged rights of illegal aliens.

The Constitution requires the federal government to conduct an "actual enumeration" every 10 years primarily because, as the Constitution also says, "Representatives shall be apportioned among the several States according to their respective Numbers."

The census has always included all residents in its total enumeration, including both legal and illegal immigrants who are not U.S. citizens, and even slaves when slavery was legal. The number of residents who are citizens was also counted throughout U.S. history, as far back as the fourth decennial census in 1820.

Until 1950, the census specifically asked whether each person being counted was a U.S. citizen. From 1960 to 2000, the citizenship question was demoted to the "long form" census questionnaire that went to 1 in 6 households, and thereafter it was included in the American Community Survey which samples 3.5 million households per year.

As Secretary Ross explained, a sample of just 1 in 6 households is not accurate enough to determine how many citizens are living in small election districts. To obtain numbers precise down to the level of small census blocks, which are required to enforce the federal Voting Rights Act, every person who is a U.S. citizen must be counted (in addition to every resident who is not a citizen).

Liberals claim that the citizenship question will discourage illegal residents from responding to the census, thereby undercounting them. Even worse, in the critics' view, is how this might result in a reduction of taxpayer funding of agencies that dole out massive benefits to the illegal population.

The wily Wilbur Ross anticipated those objections, pointing out in his 8-page statement that “no one provided evidence that reinstating a citizenship question would materially decrease response rates.” On the contrary, there’s plenty of evidence that the citizenship question has no effect on response rates, even among “those who generally distrusted government and government information collection efforts, disliked the current administration, or feared law enforcement.”

Perhaps opponents of Trump should take solace in how Trump is not ordering a census like the one used by the Roman Empire at the time of Christ. The Roman census required everyone to return to their home city to be counted, and today that rule would have the salutary effect of deporting at their own expense the many millions of illegal aliens.

### **Judicial Supremacy Runs Amok Against Census**

A stirring rebuke of judicial supremacy is, remarkably, posted on the Department of Justice website. Attorney General Jeff Sessions explained how fed up he is with the continued overreach by federal judges as they repeatedly encroach on Trump and Congress.

The latest outrage cited by General Sessions is a district court order, affirmed on appeal, that compels Commerce Secretary Wilbur Ross to submit to a deposition about why he wants the census to ask people if they are American citizens. Liberals absurdly claim that it is racist for the census to ask that basic question, and demand that Secretary Ross answer impertinent questions in which he will be falsely accused of secretly harboring a racist motive.

Cabinet officials should not be subjected to rude deposition questioning without any factual basis. Citizenship is not an ethnicity and immigrants come in all races, so it cannot be racist to ask people who live here, and who demand entitlements like Medicaid and public schooling, whether they are American citizens.

Before Justice Brett Kavanaugh was confirmed, the Supreme Court seemed fine with allowing the deposition of Secretary Ross, a member of Trump’s Cabinet. But days after Kavanaugh joined the High Court, it put this deposition on hold pending the submission of further briefing on the matter.

By this time President Donald Trump has successfully appointed two Supreme Court justices, 29 circuit judges, and 52 district court judges. But they are mostly in states that voted for him, while fierce pockets of resistance remain in deep blue states like California, New York and Hawaii.

An example is in New York City, where a Barack Obama-appointed federal judge named Jesse Furman

heard a major case against the Trump Administration. Furman received that prestigious lifetime appointment when he was only 39 years old, and he will probably be elevated to a higher court by a future Democratic president.

In classic judicial activism, Judge Furman tried to micromanage the government’s planning for the 2020 census, which is already underway. Plaintiffs and apparently Judge Furman are unhappy with how census officials seek to include a question about citizenship in the census.

It should be a no-brainer for the census to ask whether each person residing in our country is a U.S. citizen or not. That basic question was included on the main census questionnaire from 1830 to 1950, but starting in 1960 it was unfortunately demoted to a separate survey that goes to only a sample of Americans.

After the Trump Administration decided to reinstate this question on the questionnaire being sent to every household, a group of leftist organizations and Democratic officials sued Wilbur Ross as the Secretary of the Department of Commerce, which supervises the census bureau.

Only U.S. citizens are supposed to vote here, although there are numerous examples of non-citizens who were improperly placed on the voting rolls when they applied for a driver’s license. The problem is that even when non-citizens don’t vote, they are counted in the census in a way that enhances the voting power of people who do vote.

If non-citizens were evenly distributed across the United States, their presence wouldn’t dilute the voting power of U.S. citizens. But when they are concentrated in a handful of states such as California, whose population includes more than 5 million non-citizens, American citizens who live in other states are disenfranchised.

Non-citizens entitle California to at least 5 extra seats in the U.S. House of Representatives and 5 extra votes in the Electoral College, all taken from states with fewer non-citizens. Even within California, non-citizens are concentrated in a handful of that state’s 53 congressional districts, such as Maxine Waters’ district where only half the residents are American citizens.

In the 2010 census, which Obama supervised, 6 electoral votes were taken from the states of Missouri, Iowa, Michigan, Ohio, and Pennsylvania, all of which voted for Trump in 2016. That was on top of 4 electoral votes lost by those states in the 2000 census, plus another 4 lost by four other Trump states: Indiana, Mississippi, Oklahoma and Wisconsin.

Michigan, Ohio, and Pennsylvania are each projected to lose another seat in Congress and the Electoral College after 2020, as are Alabama and West Virginia. States

where aliens live will gain more seats, on top of the seats they already won in the last two census counts.

General Sessions emphasized in his posted speech that “the Judicial branch must show significant respect for the Executive branch and Congress. I fear, in a variety of ways, that respect has been eroding.”

Calling out the “eroding” deference by the judiciary is an understatement. So is the term “judicial activism,” when the better term is “judicial supremacy” as coined by Phyllis Schlafly to describe judicial interference with good policies like Trump’s census.

## Abortion Rights for Illegal Aliens Rejected

Promoters of abortion are aggressively pursuing a legal strategy to establish a new constitutional right to abortion for illegal aliens. Young girls are entering our country unlawfully, while pregnant, and a cadre of attorneys demand that courts compel the Trump Administration to be complicit in facilitating abortions for them.

This combination of illegal immigration and demands for a right to abortion may be opening people’s eyes to both. To those who support abortion, do they support a right for illegal aliens to abortion here?

The D.C. Circuit convened *en banc*, which is a rare sitting of all its active judges, for the majority Clinton and Obama-nominated judges to declare a constitutional right to abortion by illegal aliens. Then the attorneys pushing this issue for a 17-year-old girl, who apparently entered our country unlawfully while pregnant, arranged for a middle-of-the-night abortion to circumvent timely review by the U.S. Supreme Court.

The abortion mooted the case, and the precedent of the *en banc* D.C. Circuit ruling supposedly settled the issue for use nationwide. Ordinarily there is nothing left to appeal when a case is moot.

But something did not sit well with the Supreme Court Justices, perhaps including Justice Kennedy. He had silently sided with expanding the rights to abortion in *Whole Woman’s Health v. Hellerstedt* (2016), which overturned a Texas pro-life law, but is he really fine with establishing a new right to abortion for pregnant girls unlawfully entering the United States from countries having pro-life laws?

Perhaps not, and perhaps that is leading him and others to rethink their logic towards abortion. Trump’s Solicitor General Noel Francisco brilliantly appealed the D.C. Circuit concerning the pregnant illegal alien to the Supreme Court, after finding a precedent that authorizes overruling decisions that were mooted by a subsequent factual development.

Solicitor General Francisco also requested that the High Court consider disciplining the attorneys on the other side who arranged for such an irregular abortion

to evade Supreme Court review. The lack of respect for the orderly administration of justice – not to mention the possible exploitation of the immigrant girl – should be troubling even to those who support abortion.

In a similar case, another immigrant changed her mind about having the abortion amid the legal maneuvering. But a middle-of-the-night abortion does not lend itself to the clarity of mind needed for informed consent up until the operation, nor does it maximize the safety of the operation because complications are known to be higher for late-night surgeries.

Something evidently troubled at least five of the Supreme Court justices about this case of *Azar v. Garza*, probably including Justice Kennedy, because it bounced through an extraordinary 15 conferences before a terse decision emerged from the Court. The opinion was obviously a compromise, as near the end two competing views of the tactics used by the attorneys in procuring the abortion were recounted without resolution.

It was probably to avert a worse defeat for the Left that the four Justices who typically side with Planned Parenthood and the ACLU joined the unanimous decision to overturn and vacate the D.C. Circuit opinion. This wiped from the books that appellate precedent for a right to abortion by illegal aliens.

If this decision had merely stood alone, one might be reluctant to read too much into it. But it came less than a week after a surprise denial of another petition in which Planned Parenthood challenged a new pro-life law in Arkansas that is expected to cause some abortion clinics to close there.

There was no dissent from that denial of cert in *Planned Parenthood v. Jegley*, and the media was dismayed about how Planned Parenthood could lose before a Court that supposedly had five votes in its corner. The lack of a dissent suggests that the 5-4 majority on the Court for the pro-abortion side is in jeopardy or may no longer exist.

Soon thereafter Justice Kennedy retired, which gave President Trump the opportunity to nominate a strong new Justice. This pair of decisions and the spectacle of 15 conferences to issue a unanimous decision against an abortion precedent suggests that something is afoot internally at the Court.

A majority of the Court may feel, as they should, that illegal aliens from pro-life countries do not have a constitutional right to abortion here. They need to return home to give birth, because their homeland prohibits abortion, or they should give birth here.

That means a majority on the High Court would give effect to the pro-life laws of South American countries. If Planned Parenthood and the ACLU lose on that issue, as they should, then it follows that they should lose on their similar arguments that demand invalidation of pro-life laws enacted by democratically elected legislators in our country.

## Ending Birthright Citizenship

President Trump, who frequently campaigned against the horrible practice of giving automatic U.S. citizenship to children of illegal aliens, has again startled the media by proving that he really meant what he said. In an interview released in October, Trump said he would issue an executive order stopping birthright citizenship.

“We’re the only country in the world where a person comes in, has a baby, and the baby is essentially a citizen of the United States for 85 years with all of those benefits,” Trump said in an interview for Axios. “It’s ridiculous. It’s ridiculous. And it has to end.”

Trump’s blunt talk on the issue of illegal immigration was one of the main reasons Americans elected him in 2016. Yet his opponents pretend to be shocked and horrified that he plans to deliver what the voters expected when we elected him president.

“It was always told to me that you needed a constitutional amendment. Guess what? You don’t,” he said, adding that he has run it by legal counsel. “You can definitely do it with an act of Congress. But now they’re saying I can do it just with an executive order,” Trump said.

The media insisted that Trump was just “riling up his base” for the midterm election, quoting a tweet from the failed mayor of Chicago. Rahm Emanuel recently announced that he will not seek re-election in the city he has led from crisis to disaster.

Another failed politician, outgoing House Speaker Paul Ryan, pontificated to reporters, “Well, you obviously cannot do that.” Ryan went on to say, “I think in this case the 14th Amendment is pretty clear, and that would involve a very, very lengthy constitutional process.”

Actually, Ryan is half right: the 14th Amendment is “pretty clear” that birth alone is not enough to guarantee U.S. citizenship. To get automatic birthright citizenship, children must be born to parents who are “subject to the jurisdiction” of our country.

The key phrase, “subject to the jurisdiction thereof,” means more than the duty to obey our laws, which applies to everyone, citizen and alien alike. It means that to become a citizen a person must owe allegiance to the United States, and not to any other nation or state.

You are a citizen of the country or nation to which you owe your allegiance, and vice versa. Diplomats, visitors, foreign students, temporary workers, and illegal residents — all these people are citizens of their home countries, the countries they came from, even while they are temporarily inside our borders.

American history familiar to many high school students demonstrates how wrong birthright citizenship is. Indians living on reservations were not American citizens for most of our history, despite being born inside the borders of our country.

Native Americans were considered members only of their sovereign Indian tribes, until Congress extended blanket citizenship in 1924. Similarly, children born to foreign ambassadors while in the United States are not American citizens, but are citizens of their country of origin.

In their crusade against President Trump, globalists trot out alleged experts claiming that Trump’s proposal is impossible, unconstitutional, or morally wrong. But the hysterical overreaction by his critics proves how right Trump is.

“The president cannot erase the Constitution with an executive order, and the 14th Amendment’s citizenship guarantee is clear,” said Omar Jadwat, director of the ACLU’s Immigrants’ Rights Project. “This is a blatantly unconstitutional attempt to fan the flames of anti-immigrant hatred in the days ahead of the midterms.”

In fact, the last time the Supreme Court addressed the issue of birthright citizenship was 120 years ago, in the case of a child born to a lawful permanent resident who had what is now called a green card. The Supreme Court has never decided the citizenship of those born to persons unlawfully present in the United States, or lawfully present on temporary visas for tourism, education, or temporary employment.

The ACLU was also bitterly opposed to Trump’s policy of vetting travelers from countries that are hotbeds of terrorism. Globalists falsely characterized the policy as a Muslim ban, but it was upheld by the Supreme Court last June; Trump’s new executive order should fare just as well when it gets there.

Trump’s announced intention to fulfill his campaign promise caps another week of setbacks for globalism. In Brazil, which is called the second-largest democracy in the Western Hemisphere, the conservative nationalist Jair Bolsonaro won its presidency by a landslide of 55-45%.

That adds Brazil to the United States, Hungary, and the Philippines where conservative nationalists have triumphed on Election Day. Meanwhile, the adversary of President Trump who has led Germany down the wrong path of globalism, Angela Merkel, mercifully announced her plans not to seek reelection in a few years.

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