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THE CURRENT: What does the Supreme Court decision on citizenship status mean for the 2020 census?

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PITA: You're listening to "The Current" from the Brookings Podcast Network. On Thursday, in a 5-4 ruling, the U.S. Supreme Court blocked the Trump administration from adding a question on citizenship status on the 2020 census. However, this may not be the final word on the matter.

With us today is William Frey from the Metropolitan Policy Program here at Brookings. Bill, what can you tell us about the court's ruling and Chief Justice Roberts' reasoning in this decision?

FREY: Yes, this is a momentous day. People were waiting for this ruling for a long time, people who have been various interests in the census and having a good census. And it's not a final decision, but it's a good decision, at least for the time being.

Essentially, the issue is, the Trump administration and his Commerce Secretary had wanted to put his citizenship question on the 2020 census. Normally, you would ask a citizenship question to be put on a census, or any question to put on a census, many years before the census was taken so there could be adequate testing, people could understand how the wording might skew people's results, and so forth. The citizenship question has not been on a census -- a question that everybody would answer -- since 1950. So, this is rather unusual for the Trump administration to say they wanted to do this very late in the game. I think in late in 2017 was the first time it was brought up by the Commerce Secretary.

And it's controversial because, especially in this political environment, research done at the Census Bureau and by other groups show that if you put a citizenship question on the census, any people who live in households with at least one noncitizen, even that person is a legal noncitizen, will have a lower rate of response in the census. As I say, this is a fraught political time where we have raids and deportations and all of these sorts of things. The groups that would be most broadly affected, this research shows, would be Hispanics, immigrants, Asians, young people, urban people, and could significantly reduce the representation of those groups in the United States in this once-every-10-year census. So, this is why this is an important decision.

Up until now, there have been several court decisions, all of which have told the Commerce Department that they couldn't put this question on the 2020 census. The typical reason was that they did not follow appropriate procedures, what's called Administrative Procedures Act, was not followed properly. And in particular, they stated that Wilbur Ross, the Secretary of Commerce, used a kind of fake reason in order to put the question on. He said the reason he wanted to put this question on the census was because he wanted to better enforce the Voting Rights Act, the civil rights act that allows people of different racial and ethnic groups to be represented properly in various districts across the country.

He said you needed to have that citizenship question on there in order to be able to know how many people of color and so forth that were citizens lived in different parts of the country. Well, in fact, that Voting Rights Act has been in existence for decades and there are other ways to do it, especially with the Census Bureau's American Community Survey. And when people were a little bit -- they didn't look at this as the right reason, especially in this particular administration, which does not have a record for trying to enforce things like the Voting Rights Act. And so, the main legal reason why these lower courts told them that they couldn't put this citizenship question on the census is because they didn't follow normal procedures, that Ross was not honest in the documents that he provided, saying it was only because of this Voting Rights Act that he wanted to put the citizenship question on. In fact, there are other reasons, and I think a lot of people suspected this current administration didn't want to count all the immigrants, and all the Latinos, and all the urban folks, and all the young people in the same way that they would groups that vote for them.

The decision that went to the Supreme Court was not on that basis, but on this procedures act. And the idea is, was he truthful? And they found that this was contrived rationale, Justice Roberts said. And at this point, it just means that they can't put the question on the 2020 census, at least temporarily. But, Roberts said, if the lower court, really what they asked for is a better explanation than the one that Ross gave. If they can come up with a better explanation and the lower court can be satisfied, then that can again come up to the Supreme Court. But he was not satisfied, nor were the majority. They were not satisfied with the rationale for this.

And so, the immediate implication is, looks like there won't be a citizenship question in the 2020 census. But it only looks like that, because there's still the possibility that this can go down to a lower court. Already today, the president, Donald Trump, put out a tweet saying, well let's pull off printing off the census forms until we can get more legal justification for doing this, which is a little bit strange because up till now, they were all saying they had to start printing the forms in July the 1st, which is next Monday. So, that's an interesting issue too, as to what physically is possible. The census has to be taken next April. In fact, some of the early census forms have to go out in January,

and there are just many, many, many forms to print out and so forth over that time being. It's probably not extremely likely, but there is a possibility if a lower court somehow gets satisfied with a better explanation by the Secretary of Commerce, or at least there is some kind of lawsuit on the part of the Justice Department that brings it up to the Supreme Court again and satisfies them that there is a good explanation for this. That's a long way of saying it's not over yet. But for people who want to see the citizenship question off the 2020 census, it's better news than it could've been.

PITA: Alright. You and your colleagues have written a great deal about why it's important to have an accurate census count. What are some of the long-term consequences to undercounting these communities?

FREY: Sure. Well, of course, the immediate political reason for having a census, the reason it's in the Constitution, is to reapportion Congress -- how many congresspersons get allocated to each state based on the populations of each of those states. That changes the portion of Congress, and as well as the Electoral College, which is kind of important. That's the whole reason for having the Census. But, of course, it's used for lots of other things. One very important political aspect of this is how congressional and state legislative districts get districted within states. In other words, every state has various kinds of legislative districts, sometimes for their state legislature, their state senate, and then also the congressional districts have based on the populations of the state in each of these areas.

Well, it turns out that there have been groups, over the past decade or longer, that didn't think at least at these state legislative districts ought to be used using the total population. They thought it's better to use the voting age population because their argument is the representation ought to be people who vote. These are people aged 18 and over who are citizens of the United States. And what this census question would have done -- would have made it very easy for states to take this file, which would be able to identify every person in the United States by their citizenship status, as well as the other things that are in the census, age, race, some aspects of their housing, and so forth -- and would have made much easier for them to come up with this idea of redistricting on the basis of the citizenship population rather than the total population.

Why is that important? Well, it's especially important today because the under 18 population is much more racially diverse than the 18 and over population. The under 18 population, the 2020 Census will probably show, will be about half-white and half-racial minorities, whereas the overall population will be about 60 percent white. If you only look at the citizen voting age population, it might be like 68 percent white. So, if we're using a citizen voting age population - - which is different in other ways too, not just the racial composition -- it's not representative of the whole population. What we've been doing for a long time is basing these legislative districts at the state level on the total populations. And it makes sense, because schools, various kinds of facilities

that deal with young families and other issues that represent the whole population, not just people age 18 and over who are citizens, are really the kinds of things that get decided in state legislatures and for allocating federal grants and these sorts of things.

But the people who wanted to do this on the basis of the citizen voting age population tended to think that this would be politically better for them and tend to be Republican strategists that want to do this because they won't have an older white population than the one actually exists. So, this would have made it easier to do that.

There are other long-term issues, but that would be an important one since up to now we've used the entire population to do this redistricting. If we're only doing it on the older, whiter part of the population, we're excluding what's going to happen for the future of our country, sort of lagging it in terms of our governmental decision making. There are other reasons why you need to have this data for everyone, and that it's even for the private sector. People who design shopping malls or places of work and corporate headquarters -- and you know, it doesn't have to just be government programs -- use the census data, which gets collected only once every 10 years. And all the surveys that get done over that 10 year period use the census as a sampling frame, so if you have a bad census, it just messes things up for lots of people.

So, there is a political aspect to this, which is very important, but also just general information for the public at large that would be skewed if we had this citizenship question on the census and it made a flawed census because a lot of people were being enumerated.

PITA: And so, really briefly, what are the next decision point that we're going to come to that we should be keeping our eye on, to know for sure?

FREY: I think there's another court case, which could make things even worse for the citizenship question, even though it's not looking good for it right now. There is a case that's come up where it's found that a now deceased gerrymandering expert for the Republican Party had been working with the Justice Department, and perhaps the Commerce Department, prior to this big claim that they wanted the citizenship question in there to tell them that they could do this redistricting for the citizen voting age population, and would pay big payoffs for Republicans and for the non-Hispanic white population of the United States. That's percolating now in the lower courts in Maryland, and that may even bubble up to the Supreme Court and be yet another reason why they might decide that, yes, finally, there's not going to be a citizenship question on the 2020 census. But in fact, we're going to have to wait maybe weeks, maybe even months to find out whether those court cases will bubble up to the Supreme Court. The other issue, of course, is how late can the Census Bureau wait before they print out these forms. Some people say it could be as late as October. Other people say no, that would just be too late. they're just going to have to go

ahead and make those forms without the citizenship question, without the approval of the Supreme Court.

PITA: Alright. Bill, thanks for being here and explaining this to us today.

FREY: Sure. I enjoyed it.