ROB BONTA
ATTORNEY GENERAL

KEITH ELLISON
ATTORNEY GENERAL

JENNIFER DAVENPORT
ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

November 2, 2026

Via Federal eRulemaking Portal, and U.S. Mail

Secretary Howard Lutnick
U.S. Department of Commerce
Census Bureau
4600 Silver Hill Road
Designation: ADDEMO/FRN
Washington, DC 20746

Re: Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions (FDMS Docket No. USBC-2026-0628)

Dear Secretary Lutnick,

We, the Attorneys General for the States of New York, Minnesota, California, New Jersey, Arizona, Colorado, Connecticut, Delaware, Hawai‘i, Illinois, Maine, Maryland, Michigan, Nevada, New Mexico, North Carolina, Oregon, Rhode Island, Vermont, Washington, and Wisconsin, the Commonwealths Massachusetts and Virginia, and the District of Columbia, and the Governors of the Commonwealths of Kentucky and Pennsylvania (together, the "States"), write to object to the Census Bureau's (the "Bureau") proposed rule entitled "Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions" (the "Proposed Rule" or the "NPRM"), which was issued by the Bureau and published in the Federal Register on September 10, 2026.[1]

To start, the Proposed Rule is plainly unlawful because it violates both the Constitution and the Census Act. The Proposed Rule would make numerous, and harmful, changes to the conducting of the 2030 Census. As described further below, the Proposed Rule departs from the centuries-long history of the decennial census and would alter the definition of "usual residence" to exclude millions of noncitizens from the count and to shift where citizens and noncitizens are counted are enumerated. The Proposed Rule would also prohibit the collection of critical demographic information, particularly on race and ethnicity, that are used for a vast array of programs at the federal and state level. Ultimately, if effectuated, these provisions of the Proposed Rule would result in a decennial census count that is inaccurate, incomplete, and unlawful. Given the centrality

[1] Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions, 91 Fed. Reg. 57,524 (proposed Sep. 10, 2026) (to be codified at 15 C.F.R. pts. 60, 70).

of the decennial census count to the apportionment of political representation and to policymaking at both the state and federal levels, the States strongly advocate that the Bureau reconsider its approach to the 2030 Census and withdraw the Proposed Rule.

I. THE CENSUS BUREAU SHOULD NOT REDEFINE HOW "USUAL RESIDENCE" WILL BE ASCERTAINED.

a. The Proposed Rule's Exclusion of Millions of Non-Citizens from the Census Is Unprecedented and Unlawful, and Would Inflict Significant Harms.

The Census Bureau proposes—for the first time in the nation's 250-year history—to exclude from the decennial census count millions of immigrants residing in the United States. Specifically, the Proposed Rule would not count non-citizens unless they are lawful permanent residents ("LPRs").[2] This would result in millions of immigrants who reside in the United States—including individuals with work, student, or family visas, as well as individuals who have lived here for years but lack LPR status—being excluded from the census enumeration.

This proposal is unlawful and unprecedented. For purposes of apportionment, the Constitution requires the Federal Government to count every person residing in the country—without regard to their citizenship or immigration status. So too does the federal Census Act. Indeed, as long as the decennial census has been taken, the Bureau has consistently interpreted the Constitution to require the counting of all "persons" residing in the United States, regardless of their citizenship or immigration status. Yet the Bureau now asserts that the "best reading of the Constitutional mandate" requires excluding millions of immigrants who plainly reside in the United States—effectively asserting that every decennial census conducted to date has been unconstitutional. In support of its startling and newfound position, the Bureau offers a smattering of illogical and inconsistent rationales. But as explained below, none support the sudden departure from 250 years of practice and settled legal understanding. Indeed, the Bureau's thin reasoning suggests that the Administration's true motivation is to shift political representation and economic resources away from high-immigrant communities—an impermissible abuse of the decennial census that raises separate constitutional concerns under the Fifth Amendment's equal protection guarantee.

Moreover, even if the Bureau had the discretion to exclude of millions of resident immigrants from the census count—and it does not—it would be unreasonable to do so, both because it would impose needless harms on States and localities, and because it is administratively unworkable. Excluding non-citizens would deny several States the political representation to which they are constitutionally entitled, strip many States and localities of their rightful share of federal funding, and undermine the ability of States to ensure equal representation when drawing congressional and legislative districts. And it would deprive States of accurate demographic data on which they rely for a broad range of purposes. Meanwhile, the Bureau has failed to explain how it can reliably identify the people it intends to exclude from the census count. Administrative records are inadequate, and a question about citizenship or immigration status would further undermine the accuracy and completeness of the census count by reducing response rates.

i. The categorical exclusion of millions of non-citizens would violate the Fourteenth Amendment and the Census Act.

[2] *Id.* at 57,529.

The Bureau's proposed exclusion from the Census of millions of immigrants who reside in the United States violates the Enumeration Clause of the Fourteenth Amendment. That clause requires the decennial census to "count the whole number of persons in each State," from which representatives "shall be apportioned among the several States according to their respective numbers."[3] Consistent with its plain meaning, the Supreme Court has held that the word "persons," as used in the Fourteenth Amendment, includes all immigrants regardless of their immigration status.[4]

The Proposed Rule also contravenes centuries of "historical practice," which the Supreme Court has identified as an "important" consideration in evaluating the constitutionality of decennial census policies.[5] Since the inception of the decennial census, "no census . . . has excluded people based solely on immigration status."[6] After all, the Framers emphasized that a core "idea of the Constitution" is that "the whole population is represented; that although all do not vote, yet all are heard."[7] And, in drafting the Fourteenth Amendment, Congress reaffirmed that apportionment should be based on *all* persons, including "foreigners not naturalized."[8] Indeed, Congress expressly considered and rejected proposed language to apportion representatives among the States "according to their respective legal voters" or "Citizens," opting instead for the more inclusive term "persons." In short, the Proposed Rule violates the constitutional mandate to count "persons" for apportionment.

For the same reasons, the Proposed Rule would violate the Census Act, which directs the Secretary of Commerce (the "Secretary") to conduct a "tabulation of total population by States" that is "required for the apportionment of Representatives in Congress among the several States."[9] In other words, Congress has directed the Secretary to carry out the decennial census that is specifically required by the Enumeration Clause. The Secretary's exercise of this duty must conform to constitutional requirements—including the mandate to count the "whole number of persons in each State." The first census statute established "usual residence" as "the gloss given to the constitutional phrase 'in each State,'" and that principle has been used since then "to allocate persons to their home states."[10] That requirement constrains any discretion that the Secretary may otherwise have regarding the conduct of the Census.

The Bureau incorrectly asserts that the immigrants excluded by the Proposed Rule are not covered by the Fourteenth Amendment's Enumeration Clause because they "are not true inhabitants, members of the body politic, or persons with a 'usual residence' in the United States due to their lack of a sufficient tie and allegiance to the United States."[11] The Bureau further asserts "the historical meaning of 'usual residence' [is] tied to allegiance, durable permission from the sovereign to settle within the United States, and establishment of domicile within the United States," and thus anyone who is not a citizen or an LPR must be excluded from the Census. In

---

[3] U.S. Const. amend. XIV, § 2; id. art. I, § 2, cl. 3.
[4] *Plyler v. Doe*, 457 U.S. 202, 212 (1982) (holding that the Fourteenth Amendment's use of "persons" includes immigrants "unlawfully present").
[5] *Wisconsin v. City of New York*, 517 U.S. 1, 21 (1996).
[6] *Trump v. New York*, 592 U.S. 125, 147 (2020) (Breyer, J., dissenting).
[7] *Evenwel v. Abbott*, 578 U.S. 54, 66–67 (2016) (describing how Framers of the Fourteenth Amendment debated, but ultimately rejected, using the voter population for the apportionment base).
[8] Cong. Globe, 39th Cong., 1st Sess. 2767, 2944 (1866).
[9] 13 U.S.C. § 141(b).
[10] *Franklin v. Massachusetts*, 505 U.S. 788, 804 (1992).
[11] Proposed Residence Criteria and Proposed Regulations, 91 Fed. Reg. at 57,526.

other words, the Bureau argues that those who reside in the U.S. should be included in the Census apportionment count only if they: (1) are a "member[] of the body politic"; (2) have a sufficient tie or allegiance to the country; (3) have permission to settle in the United States; and/or (4) have established residence and intend to remain.[12] But none of these considerations is relevant to whether a person must be counted for apportionment.

First, the Bureau lacks any legal support for its assertion that apportionment should be based on "members of the body politic," a concept that the Bureau does not even define. The Proposed Rule points to *Wesberry v. Sanders*,[13] but that decision makes no mention of the "body politic" concept. Likewise, nothing in the Bureau's other cherrypicked citations suggests that immigrants residing in the United States cannot be counted in the decennial census because they are not so-called "members of the body politic."[14] Indeed, the Bureau does not identify any definition of "members of the body politic" that includes LPRs but excludes all other immigrants, as the Proposed Rule does.

The Bureau can cite no authority for its "members of the body politic" principle because it makes no sense. A "body politic" is not a group of people but "a social compact" that "all shall be governed by certain laws for the common good."[15] If the Bureau wishes to limit "persons" to those our country's social compact *governs*, the groups they propose to exclude plainly qualify: U.S. laws govern *all* residents, regardless of their immigration status.[16] On the other hand, if the Bureau intends "members of the body politic" to refer to people with a stake in political representation, that definition merely begs the question because being counted for apportionment of representatives is precisely what gives those counted a stake. Indeed, as the Supreme Court has recognized, "representatives serve all residents, not just those eligible or registered to vote."[17] Nor does the Bureau identify any definition of "members of the body politic" that includes citizens and LPRs and excludes all others, as the Proposed Rule does. By this measure, non-citizens are plainly "members of the body politic."

---

[12] *Id.* at 57,526.

[13] 376 U.S. 1 (1964).

[14] One source the Bureau cites is completely unrelated to Article I or the Fourteenth Amendment: *Potter v. Ross* interpreted "inhabitant" in the context of a state-specific personal (poll) tax statute. *Potter v. Ross*, 23 N.J.L. 517, 520 (Sup. Ct. 1852). Another source, the cited portion of Timothy Farrar's treatise, suggests a wide range of phrases that could be understood to refer to "members" of the body politic—including "inhabitants of a state," but also "citizens"—and thus fails to provide a cogent definition of "body politic," much less support the claim that it includes only certain immigrants residing in the United States but not others. Timothy Farrar, *Manual on the Constitution of the United States of America* 55–56 (1867). Indeed, elsewhere, Farrar confirms that the phrase "all persons' means everybody, without distinction." *Id.*, 53–54. And two other cited authorities, *Papers of John Adams* and *Bas v. Steele*, merely link "inhabitant" with an intent to remain within a jurisdiction. 16 *Papers of John Adams* 362 (Gregg L. Lint et al. eds., 2012); 2 F. Cas. 988, 993 (C.C.D. Pa. 1818) (No. 1088) (Washington, Circuit Justice). The Bureau's final citation, to Vattel's *The Law of Nations* is inapposite because that treatise dealt with international law concepts and had no bearing on the Framers' drafting of the Apportionment Clause. 1 Emmerich de Vattel, *The Law of Nations* § 213, at 92 (1760); *see Trump v. New York*, 592 U.S. at 150 (Breyer, J., dissenting) (minimizing the significance of Vattel's work as discussing international law, which is unrelated to the "uniquely American debate" over apportionment).

[15] *Munn. v. People of State of Illinois*, 94 U.S. 113, 124 (1876) (quoting Mass. Const. pmbl.) (internal quotation marks removed).

[16] *See*, *e.g.*, *Trump v. Barbara*, 146 S. Ct. 2438, 2450 (2026) (noting "the power of the United States to govern those within its territory").

[17] *Evenwel v. Abbott*, 578 U.S. 54, 74 (2016).

Second, the Bureau's argument that the excluded immigrants should not be counted for apportionment because they "lack [] a sufficient tie and allegiance to the United States"[18] fails twice over. For one, the Bureau attempts to impose a "tie or allegiance" requirement by conflating two questions: (1) *who* is counted as part of the Census; and (2) *where* (to which State) to allocate counted persons. The Bureau admits "the term 'persons,' as used in Article I, Section 2, and in the Fourteenth Amendment [] denote[s] *who* counts for purposes of apportionment," while "the phrase 'in each State'" denotes "*where* to count such individuals."[19] And the Bureau attempts to incorporate into the first question (*who* counts) a requirement of a "tie or allegiance"—language from *Franklin v. Massachusetts*[20]—to the United States. But *Franklin*'s "allegiance or enduring tie" language does not bear on whether one is a "person" to be counted because *Franklin* was limited to the second question: *where* (to which state) to allocate indisputably counted persons—American servicemembers "temporarily stationed overseas."[21] In other words, the Court held only that, to be *allocated to* a particular state, a person must have "the required tie to th[at] *State*."[22]. (emphasis added). *Franklin* does not discuss, much less establish a standard for, a required tie between a person and *the United States*.

But even if *Franklin* had held that an individual needs an "allegiance or enduring tie" to the country to be counted, all non-citizens who live here have such an allegiance or tie: their non-temporary "physical presence" in this country.[23] *Franklin* recognized, consistent with centuries of practice, that non-temporary presence is in fact a sufficient "allegiance or tie" to that place and held only that there are additional ways beyond physical presence to establish the required tie.[24]

Third, the Bureau's conclusory assertion that "persons" covered by the Enumeration Clause includes only those with "durable permission from the sovereign to settle within the United States,"[25] is entirely untethered from any authority—and directly contrary to *Plyler v. Doe*'s holding that "persons" under the Fourteenth Amendment includes even those who are here unlawfully.[26] Moreover, the Bureau's "durable permission" standard does not provide a sound basis for the distinctions that the Proposed Rule draws: U.S. law anticipates that holders of several visa types who would be excluded by the Proposed Rule—including extraordinary individuals, specialized professionals, and citizens' fiancés—intend to remain.[27] Moreover, the Proposed Rule, once again, does not actually adhere to the "durable permission" standard because it would exclude from the census count persons authorized to live in the United States indefinitely under the Compacts of Free Association.[28]

---

[18] Proposed Residence Criteria and Proposed Regulations, 91 Fed. Reg. at 57,526.
[19] *Id.*
[20] 505 U.S. 788 (1992).
[21] *Id.* at 804.
[22] *Id.*
[23] *Id*.
[24] *See id.* at 804–06. The Proposed Rule also fails to follow its own purported standard, including in excluding U.S. non-citizen nationals who, by definition, are persons owing "permanent allegiance to the United States." 8 U.S.C. § 1101(22).
[25] Proposed Residence Criteria and Proposed Regulations, 91 Fed. Reg. at 57,526.
[26] 457 U.S. 202, 212.
[27] *See* Katherine L. Porter, *Retain the Brains*, 40 Hofstra L. Rev. 593, 606 (2011) (setting out dual-intent visa categories).
[28] U.S. Gov't Accountability Off., GAO-20-491*, Compacts of Free Association: Populations in U.S. Areas Have Grown, with Varying Reported Effects* (2020), https://www.gao.gov/products/gao-20-491.

Finally, the Bureau suggests that an individual must have "establish[ed] domicile within the United States" to be counted.[29] But, once again, the Bureau has neither explained what it means to "establish domicile," nor shown that the non-LPR immigrants it seeks to exclude have not done so. The Bureau cites only sources that limit counted "inhabitants" to those with "something more than" "a mere temporary residence."[30] But the Bureau proposes excluding many who meet that standard, including the "productive young people who were brought here as children and know only this country."[31] Indeed, the "domicile" theory cannot support the Proposed Rule's distinction between LPRs and other immigrant residents. As just one example, an H1-B visa holder who has applied for permanent residency has established U.S. domicile and intends to remain, no less so than when his permanent residency application is approved.

ii. The Proposed Rule's exclusion of millions of non-citizens would likely violate the Due Process Clause of the Fifth Amendment.

The Bureau's choice to exclude millions of immigrants from the decennial census despite the constitutional and legislative mandate to count them raises serious questions about whether the Bureau's intent is to discriminate based on race, ethnicity, or national origin—especially against Hispanic and other immigrant communities. After all, the Bureau's Proposed Rule would undermine the representational equality constitutionally guaranteed by total-population apportionment in favor of discriminatory, incoherent, and undefined metrics like "allegiance" or membership in the "body politic." As used, these terms attempt to resurrect voter-population apportionment arguments considered and rejected by the Framers when drafting the Fourteenth Amendment and rejected by numerous courts.[32] These theories of representation were rejected for good reason: "[n]onvoters have an important stake in many policy debates . . . and in receiving constituent services, such as help navigating public-benefits bureaucracies."[33] Total-population apportionment without regard to voting eligibility ensures that each representative is "subject to requests and suggestions from the same number of constituents."[34] If finalized, the Proposed Rule would dilute the access of residents in districts with large immigrant populations to petition their representative—in violation of the due process clause of the Fifth Amendment.

Moreover, the Bureau's proposed exclusions appear to be part of an ongoing effort to discriminate against communities with relatively higher concentrations of immigrants. President Trump has made multiple statements vilifying these communities and has long acted to interfere in the decennial enumeration in order to dilute their political representation.[35] Indeed, the Supreme Court rejected the first Trump Administration's efforts to add a citizenship question to the

---

[29] Proposed Residence Criteria and Proposed Regulations, 91 Fed. Reg. at 57,526.
[30] *Id.* at 57,525 (quoting *Potter v. Ross*, 23 N.J.L. 517, 520 (Sup. Ct. 1852)); *see also* Letter from John Adams to the President of Congress (Nov. 3, 1784) in 16 Papers of John Adams 362 (Gregg L. Lin et al. eds., 2012) (Adams) (not "every Stranger who has been in the United States, or who may be there are present, is [] an inhabitant").
[31] *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 29 (2020).
[32] *See e.g.*, *Fed'n for Am. Immigr. Reform v. Klutznick*, 486 F.Supp. 564, 576–77 (D.D.C. 1980) (noting that "[d]uring the first half of this century, a variety of proposals were made to exclude aliens from the apportionment base, and it appears to have been generally accepted that such a result would require a constitutional amendment").
[33] *Evenwel v. Abbott*, 578 U.S. 54, 74 (2016).
[34] *Id.*
[35] See e.g., Exec. Order No. 13880, Collecting Information About Citizenship Status in Connection With the Decennial Census, 84 Fed. Reg. 33,821 (July 16, 2019); Memorandum for the Secretary of Commerce on Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census, 85 Fed. Reg. 44,679 (July 23, 2020).

decennial census because the reasons offered by the Administration were a pretextual cover.[36] This Proposed Rule appears similarly motivated by a desire to curb the political power of immigrant-dense communities.

iii. Even if the Proposed Rule were not contrary to law, it would be an unreasonable exercise of agency discretion.

Even if the Proposed Rule were not foreclosed by the Constitution and statute—which it is—it would be an unreasonable exercise of the Bureau's discretion over the conduct of the Census. The Proposed Rule would undermine the principles of equal political representation and upend the States' reliance on consistent federal funding streams. Moreover, to the extent the Bureau intends to implement the Proposed Rule by including questions about citizenship and immigration status on the Census questionnaire, that would itself be unlawful and unreasonable, as it would expose these communities to current privacy vulnerabilities in the Census and result in differential undercounts that undermine the purpose of the Census.

To begin, the Proposed Rule would unfairly skew political representation across the States. Based on available data, the States project that roughly 16.1 million individuals nationwide would be excluded from the Census count under the Proposed Rule.[37] But those individuals are not distributed proportionately across the states. For example, an estimate of the undocumented immigrant population in 2023 alone indicates that the Proposed Rule would exclude at least 2,250,000 California residents (more than 5% of the State's population), 825,000 New York residents (more than 4% of the State's population), and 600,000 New Jersey residents (more than 6% of the State's population).[38] By contrast, the unauthorized noncitizen population in other states like Alabama, Missouri, and Ohio is less than 2%.[39] Excluding non-LPR immigrants from the census count would therefore shift the allocation of Congressional seats and electoral college votes away from states with relatively larger shares of these populations and toward states with relatively smaller shares—unfairly stripping States like New Jersey, California, and New York of

---

[36] *Dep't of Com. v. New York*, 588 U.S. 752, 782–85 (2019).

[37] See Stephanie Kramer & Jeffrey S. Passel, *What the Data Says About Immigrants in the U.S.,* Pew Rsch. Ctr. (Aug. 21, 2025), https://perma.cc/P68U-UWHX; *Unauthorized Immigrants Were 27% of the U.S. Foreign-Born Population in 2023*, Pew Rsch. Ctr. (Aug. 19, 2025), https://perma.cc/GU9L-ZJPE (calculated using a total foreign-born U.S. population of 51.8 million, where 46% of that population are naturalized U.S. citizens and 23% were LPRs, leaving the remaining 31% subject to exclusion from Census count under the Proposed Rule).

[38] See Jeffrey S. Passel & Jens Manuel Krogstad, Pew Rsch. Ctr., *U.S. Unauthorized Immigrant Population Reached a Record 14 Million in 2023* (Aug. 21, 2025), https://perma.cc/3DVD-EXBG, and *QuickFacts: Population Estimates in California, New York, and New Jersey, July 1, 2025, (V2025)*, U.S. Census Bureau, https://www.census.gov/quickfacts/fact/table/CA,NJ,NY/PST045225 (last visited on Oct. 29, 2026); *See also* Bryan Baker & Robert Warren, Off. of Homeland Sec. Stats., *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2018–January 2022* (Apr. 2024), https://ohss.dhs.gov/sites/default/files/2024-06/2024_0418_ohss_estimates-of-the-unauthorized-immigrant-population-residing-in-the-united-states-january-2018%25E2%2580%2593january-2022.pdf; *State Immigration Statistics Map*, Off. of Homeland Sec. Stats., https://ohss.dhs.gov/topics/immigration/state-immigration-data/state-immigration-statistics-map (last visited Oct. 29, 2026).

[39] *QuickFacts: Population Estimates in Alabama, Missouri, and Ohio, July 1, 2025 (V2025)*, U.S. Census Bureau, https://www.census.gov/quickfacts/AL,MO,OH/PST045225 (last visited on Oct. 29, 2026).

representatives in the House and diluting the "effectiveness of the[] votes" of individuals living in those States.[40]

Moreover, the Bureau's preliminary regulatory impact analysis ("PRIA") suggests that the Proposed Rule would not just exclude non-LPR immigrants from the apportionment base, but would exclude non-LPRs from the decennial census count entirely.[41] That would in turn have devastating fiscal impacts on States with relatively larger proportions of the excluded immigrant groups, because "the population count derived from the census is used . . . to allocate federal funds to the States."[42] Excluding millions of immigrants from these population counts would be entirely irrational: the proportion of a State's residents who are immigrants has no relation to the usage of its roads, the demand for hospitals and social services, the need for public safety, or the scope of its responsibility to educate all children.[43]

Consequently, the Proposed Rule would upend the States' "serious reliance interests" in a Census count that includes all of their residents.[44] States design their medium- and long-term budgets around the expectation that their relative populations will not drastically change from census to census—and, in turn, neither will the distribution of federal funding for critical infrastructure needs and public services.[45] This abrupt change in population accounting would impose severe fundings cuts on states with higher percentages of excluded immigrant groups—but without any corresponding reduction in their budgetary needs.

Excluding millions of immigrants from any decennial census would also undermine the ability of the States to ensure equal political representation. Many states are required to rely on decennial census counts as the population base for redrawing their state and local districts to comply with the mandate that such districts are "as nearly of equal population as is practicable."[46]

---

[40] *Dep't of Com. v. U.S. House of Representatives*, 525 U.S. 316, 331–32 (1999).
Even relatively small shifts in the census enumeration can result in malapportionment and substantially harm a state. *See Utah v. Evans*, 536 U.S. 452, 458 (2002) (noting that a change in North Carolina's population by just 0.4% meant that North Carolina received an additional congressional seat). For example, in 2020, New York came just 89 residents short of maintaining its then existing 27 congressional seats. *See* Melissa Russo, *NY May Challenge Census Count That Left State 89 People Shy Of Keeping Seat in Congress*, NBC New York (Apr. 28, 2021), https://www.nbcnewyork.com/news/politics/ny-may-challenge-census-count-that-left-state-89-people-shy-of-keeping-seat-in-congress/3023546/.

[41] *See* U.S. Census Bureau, Docket No. 260903-0005, Preliminary Regulatory Impact Analysis: Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions, 11–13, (Sep. 10, 2026), https://www.regulations.gov/document/USBC-2026-0628-0002 [hereinafter PRIA].

[42] *Dep't of Com. v. New York*, 588 U.S. 752, 759–60 (2019); *see, e.g.*, Karen E. Lynch, Cong. Rsch. Serv., IF10115, *Social Services Block Grant* (2024) (federal funding block for social services is allocated "to states according to the relative size of each state's population").

[43] *see Plyler*, 457 U.S. 202, 202.

[44] *F.C.C. v. Fox Television Stations, Inc.*, 557 U.S. 502, 515 (2009) (agencies that upend reliance interests in switching tacks "must" "provide a more detailed justification than what would suffice for a new policy created on a blank slate").

[45] *See, e.g.*, Lynch, *supra* note 42, tbl. 1(in just one example, every year states effectively transfer over $1.6 billion of federal funding to support a wide variety of social services via the Social Services Block Grant); *see also* States participate in the Clean Water State Revolving Fund, a federal-state partnership created by the Clean Water Act that provides states financial assistance for a wide range of water infrastructure projects. 33 U.S.C. § 1383. The provision of such funds for critical projects such as needed upgrades for the treatment and disposal of wastewaters rely on accurate and complete census data.

[46] *Karcher v. Daggett*, 462 U.S. 725, 782 n.14 (1983) (White, J., dissenting); *see Kravitz v. U.S. Dep't of Com.*, 366 F. Supp. 3d 681, 723 (D. Md. 2019) (identifying States that rely on decennial census data for redistricting as a matter of law); Cal. Const. art. XXI, § 1; Fla. Const. art. X, § 8; Nev. Const. art. 4, § 5; Tex. Const. art. III, § 28.

Excluding the non-LPR immigrant population will force these states to redistrict using fundamentally inaccurate population counts—harming their sovereign interests in representative government and preventing them from ensuring equal representation for their residents.[47]

The proposed exclusion of non-LPR immigrants would also undermine the ability of States and localities to engage in important planning and budgetary activities and to ensure access to life-saving public services and resources. Various state and local government agencies rely on census population data to determine the demand for public services in their jurisdictions. Without a complete count, the States and others could not appropriately plan for first-responder staffing, public transit, shelter needs, evacuation routes, power needs, and much more. Nor could a host of critical questions be answered. For example, how many schools should a region have? How many emergency rooms? What are the housing needs in a particular area? The Proposed Rule would force States and localities to simply guess. Indeed, some States use census data on immigrant populations specifically to engage in policy planning for those groups. For example, New Jersey's Office of New Americans uses decennial census data to assess the need for refugee resettlement programs and other services designed to integrate these populations. Furthermore, without a complete population count in the 2030 Census, States would be unable to evaluate demographic trends over time, with pre-2030 census data and post-2030 census data using different baselines that count different persons and consequently preclude any meaningful comparison of the data.

Apart from undermining the reliability and use of census data, the proposed exclusion of non-LPR immigrants is also practically and legally unworkable. The Bureau suggests that it may use administrative records to identify which immigrants should be counted and which should not. Administrative records have been found to be unreliable in accurately identifying noncitizens and their immigration statuses—particularly undocumented immigrants—so reliance on these records risks a high error rate, undercounting, and inequitable apportionment.[48] The Bureau's alternative proposal for "distinguish[ing] between foreign citizens in the United States who are counted for apportionment and those who are not" by "includ[ing] a question about legal status on the . . . census questionnaire,"[49] would have its own disastrous effects. These changes will likely lead to a "decline in self-response rates attributable to the question,"—a "decline" which will not be "evenly distributed among subpopulations" and will thus distort the census data.[50] In 2019, the Bureau projected that a citizenship question would cause a 5.8% drop in response rates among noncitizen households—an estimate that the Bureau characterized as "conservative."[51] The Bureau also found that Hispanic residents would experience a differential decline in self-response rates.[52] These

---

[47] *See Karcher*, 462 U.S. at 782 n.14 (White, J., dissenting).

[48] *See* Dep't of Homeland Sec., *Privacy Impact Assessment for the DHS Immigration-Related Information Sharing with U.S. Census Bureau* 2, 11 (updated Nov. 23, 2020), https://perma.cc/N5ED-FA3D ("Determining an individual's citizenship based on various DHS data is a challenging task."); J. David Brown, et al., U.S. Census Bureau, *Real-Time 2020 Administrative Record Census Simulation* xiii (May 5, 2023), https://perma.cc/7KXK-4ATN (running a simulation of the 2020 Census using administrative records and finding that the administrative records census yielded "many more noncitizens, especially those with unknown legal status"); Randy Capps, et al., Migration Pol'y Inst., *Millions of U.S. Citizens Could Be Excluded Under Trump Plan to Remove Unauthorized Immigrants from Census Data* (July 2020), https://perma.cc/Y93J-KE5N (noting that the Bureau's attempt to match the 2010 Census with administrative record data was "[f]raught with [e]rrors").

[49] Proposed Residence Criteria and Proposed Regulations. 91 Fed. Reg. at 57,526.

[50] *New York v. United States Dep't of Com.*, 351 F. Supp. 3d 502, 526 (S.D.N.Y.), *aff'd in part sub nom*, *Dep't of Com. v. New York*, 588 U.S. 752 (2019).

[51] *Id*. at 579.

[52] *Id*. at 579–80.

concerns were corroborated in a more recent paper by Bureau researchers, which found that "inclusion of a citizenship question increases the undercount of households with noncitizens," and that "households with Latin American-born immigrants" were especially susceptible to a drop in response rates.[53] And concerns about depressed response rates would be exacerbated if the Bureau were to implement disclosure avoidance plans that make it more difficult to safeguard the privacy and confidentiality of census response data.[54] A differential undercount among noncitizen and Hispanic households would impose further disproportionate harms on States that have relatively higher percentages of these populations.[55] The Proposed Rule is thus, in addition to being unlawful, an unreasonable exercise of the Bureau's discretion.

b. The Proposed Rule's Redefinition of the Census Enumeration Period, Abandonment of the Historical Meaning of Usual Residence, and Reliance on Tax Documents Are Unlawful and Improper.

The Proposed Rule would make additional changes to how the decennial census count would be conducted, which are likely to result in an inaccurate count. The Proposed Rule would establish a census enumeration period running from January 3, 2030 to April 1, 2030 with respondents being counted where they have "lawfully spent the greatest number of days during the census enumeration period[.]"[56] The Proposed Rule would also require that a person's usual residence "be consistent with, and evidenced by, their tax records[.]"[57] These changes, independently and in combination, represent a significant departure from the well-established understanding that all persons must be counted at their usual residence, *i.e.*, where they live most of the time "as of" Census Day.[58] In abandoning the established concept of usual residence, and the Census Act's command that usual residence be determined as of April 1, the Proposed Rule creates a significant risk of counting persons away from their usual residence, thereby undermining the accuracy and completeness of the 2030 Census.

i. The proposed "census enumeration period" conflicts with the Census Act's establishment of "Census Day."

The Proposed Rule's creation of a new "census enumeration period" is contrary to the Census Act's explicit command to "take a decennial census of population as of the first day of April[.]"[59] The Census Act makes no mention of a "census period," and neither the Secretary of

---

[53] J. David Brown & Misty L. Heggeness, *Citizenship Question Effects on Household Survey Response* Abstract (U.S. Census Bureau, Ctr. for Econ. Studs., Working Paper CES 24-31, 2024), https://perma.cc/YJS7-USKB.

[54] *See* U.S. Dep't of Com., Dep't Admin. Order 216-26, Disclosure Avoidance for Statistical Products (June 4, 2026), https://perma.cc/JE9U-38J9 (restricting the Census Bureau and Bureau of Economic Analysis to coarsening (rounding, aggregating, and reporting in ranges) and suppression (not reporting), the oldest methods of privacy protection, and eliminating noise infusion ("modifying a dataset by adding random values to certain entries")); 13 U.S.C.A. § 8(b) and 9(a) (Section 8(b) allows the Secretary of Commerce to reveal statistical materials "which do not disclose the information reported by, or on behalf of, any particular respondent" while Section 9(a) prohibits the Secretary from using the information furnished except for statistical purposes and from making any publication "whereby the data furnished by any particular establishment or individual ... can be identified"; it also prohibits examination of individual reports by "anyone other than the sworn officers and employees of the Department or bureau or agency thereof.").

[55] *See New York*, 351 F. Supp. 3d. at 593–600 (explaining the effects of such a net differential undercount on apportionment, federal funding allocation, and the quality and accuracy of census data).

[56] *See* Proposed Residence Criteria and Proposed Regulations, 91 Fed. Reg. at 57,529.

[57] *Id.*

[58] 13 U.S.C. § 141(a); *see also* U.S. Const. art I, § 2, cl. 3; *Franklin*, 505 U.S. 788, 804.

[59] 13 U.S.C. § 141(a).

Commerce nor the Census Bureau is permitted to regulate away Congress' explicit mandate to count each person at their usual residence "as of" April 1. The Census Act's clear command is to count a person's residence "as of" April 1.[60]

Because the Proposed Rule would define "usual residence" during an arbitrary period of time that covers mainly winter months, it is possible that persons would be counted at a residence different than their usual residence on Census Day. For example, if, one month before Census Day, a person moved to a new state to permanently reside there going forward, they would nevertheless be required by the Proposed Rule to list their usual residence as the place in which they previously resided, in a different state, because that is where they would have "lawfully spent the greatest number of days during the census enumeration period[.]"[61] But that prior residence would be both somewhere they no longer resided, and a place they did not consider their usual residence on Census Day.[62]

Indeed, April 1 was adopted as Census Day specifically to avoid this and similar problems. Congress considered dates in both June and January for Census Day, but rejected each in part because of the large numbers of city-dwellers who commonly spent time in vacation homes during those months.[63] Congress selected April 1 as a compromise to ensure that persons are accurately counted at their usual residence.[64] The Secretary of Commerce is not empowered to reject this legislative compromise and rewrite the Census Act in a manner that is inconsistent with the mandates of the statute.[65]

ii. The Proposed Rule further departs from the established understanding that persons must be counted at their usual residence, meaning where they live most of the time.

The Proposed Rule further conflicts with the established understanding of "usual residence" under the Constitution and Census Act. Across more than two centuries, and twenty-four discrete decennial census counts, the Census Act has been understood, by both the Bureau and courts, to require the counting of all persons where they typically engage in the key parts of life (e.g., eating, sleeping and living) as of Census Day. Although the exact contours of "usual residence" have been modified slightly over time, the core principles—counting persons where

---

[60] *See City of New York v. U.S. Dep't of Com.*, 822 F. Supp. 906, 912 n.1 (E.D.N.Y 1993) (noting that April 1 "is the precise date as of which the Census Bureau seeks to count the population") (*vacated on other grounds* 34 F.3d 1114 (2d Cir. 1994), *rev'd sub nom Wisconsin v. City of New York*, 517 U.S. 1, (1996)); *see also* Nat'l Rsch. Council, *Once, Only Once, and in the Right Place: Residence Rules in the Decennial Census* 220 (2006), https://doi.org/10.17226/11727 [hereinafter Nat'l Rsch. Council, *Once, Only Once*] ("[T]he census is intended to be a count of the resident population of the United States on Census Day, April 1, of the decennial year.").

[61] *See* Proposed Residence Criteria and Proposed Regulations, 91 Fed Reg. at 57,529.

[62] The Proposed Rule attempts to address this by stating that the determination would still be of "a person's 'usual residence' as of April 1" in its preamble. *See id.* at 57,526. However, the text of the Proposed Rule does not appear to provide any such flexibility. Indeed, beyond stating that "April 1 is referred to as 'Census Day," the Proposed Rule itself does not actually incorporate the statutory mandate to count the usual residence of a voter "as of" April 1. *See id.* at 57,529.

[63] *See* Nat'l Rsch. Council, *Once, Only Once, supra* note 60, at 29.

[64] *See id. See also* Reapportionment Act of 1929, Pub. L. No. 71-13, § 6, 46 Stat. 21, 23 (establishing that the fifteenth decennial census was to be taken "as of April 1"). Congress later reaffirmed April 1 as the "decennial census date" (codified as amended at 13 U.S.C. § 141(a)).

[65] *See e.g.*, *Olson v. Norman*, 830 F.3d 811, 816 (8th Cir. 1987) ("[T]he Secretary's interpretation cannot stand if it is contrary to the clear language of the statute.").

they engage in life's basic requirements most of the time—have remained consistent. The Proposed Rule's adoption of a "census enumeration period" and reliance on tax records sharply departs from this long-established understanding and, in doing so, compromises the accuracy and completeness of the census enumeration.

The original Census Act of 1790 required the counting of people at their "usual place of abode."[66] This requirement arose from the Constitution's demand to conduct an "actual enumeration" of the States "according to their respective Numbers[.]"[67] Later census legislation, including the current iteration of the Census Act, carried forward this requirement that persons be counted at their usual residence by requiring a count of the "total population" of each state.[68] Even the mid-19th century censuses, which counted residency at the household, rather than individual, level defined the household as those living together under the same roof, centering the acts of typically living and sleeping in the same place.[69] Most recently, the 2010 and 2020 censuses have defined usual residence as where a person "lives and sleeps most of the time."[70]

At the outset, the Proposed Rule departs from counting persons at their "usual residence," which is where they typically live or sleep, by instead counting persons where they have "lawfully spent the greatest number of days during the census enumeration period," from January 3, 2030 to April 1, 2030.[71] In doing so, the Proposed Rule disconnects "usual residence" from its historically understood meaning and bases residence on only where a person happens to be during a roughly four-month period, regardless of where they usually reside on Census Day. For example, should a person spend the first three months of the year at a vacation home, under the Proposed Rule, they would be counted there, despite typically residing elsewhere. And by calculating usual residency by where one "spen[ds] at least one hour physically and lawfully present,"[72] the Proposed Rule ties residency to mere presence in a location for an hour. This further disconnects the decennial census from the core concepts of residency (e.g., eating, sleeping, and living) that the Bureau has historically looked to in determining a person's usual residence and creates confusion as to whether a person should be properly counted at non-residences, such as their office, where they may be present for an hour on a greater number of days than their home. In either case, such a place would not be that person's usual residence as the term has long been understood under the Census Act and the Constitution.

---

[66] Census Act of 1790, ch. 2, 1 Stat. 101.
Similarly, a person "without a settled place of residence" including one "occasionally absent" from their home was counted "as belonging to the place in which he usually resides . . . ." *See id.*

[67] U.S. Const. Art 1, § 2, cl. 3. *See also Franklin*, 505 U.S. at 804 ("'Usual residence' was the gloss given the constitutional phrase 'in each State' by the first enumeration count and has been used by the Census Bureau ever since to allocate persons to their home States.").

[68] 13 U.S.C. § 141(b); *see* also Final 2020 Census Residence Criteria and Residence Situations, 83 Fed Reg. 5525, 5526 (Feb. 8, 2018) ("This concept of 'usual residence' is grounded in the law providing for the first census . . . .").

[69] *See* Nat'l Rsch. Council, *Once, Only Once*, *supra* note 60, at 34.

[70] *See 2010 Census Residence Rule and Residence Situations*, U.S. Census Bureau (Oct. 8, 2021), https://perma.cc/ZKZ6-8V8Y; *and* Final 2020 Census Residence Criteria, 83 Fed Reg. at 5533.

[71] *See* Proposed Residence Criteria and Proposed Regulations, 91 Fed. Reg. at 57,529.

[72] *Id.*
The Proposed Rule only counts those places where a respondent has "lawfully" spent time, *see id.* However, what the term "lawfully" denotes is unclear in this context adding to the confusion about where respondents are supposed to be counted.

Second, the use of tax documents to "evidence[]"[73] usual residence runs against the established understanding of usual residence incorporated into the Census Act and the Constitution. Tax records typically link to a mailing address, which can include addresses such as those for businesses and P.O. boxes. And many people list an accountant's office on their taxes.[74] None of these addresses would be the person's usual address. Moreover, even for residential addresses, where a person pays taxes is not necessarily the same as their usual residence as historically understood. For example, a college student's usual residence may be at their college—where they live and sleep most of the time—but their tax records may show them as a dependent at their parents' home. Others may pay taxes at multiple residences, but will maintain only one usual residence. These conflicts are made more likely because of the differences in how residence is defined for tax purposes and in the Proposed Rule.[75] Additionally, military service members and their families, who have multiple options for where to file their taxes,[76] are likely to file in low tax states regardless of where they usually reside as traditionally understood. Finally, because tax day falls after Census Day,[77] tax records may not reflect residence during the Proposed Rule's census enumeration period.

Adhering to the historical understanding of usual residence is central to ensuring that all persons are counted in the right location and to ensuring that the census enumeration complies with the constitutional mandate to distribute political power evenly, and correctly, according to each state's population.[78] In conducting the decennial census, the Bureau's decisionmaking must comport with this constitutional and statutory mandate.[79] The Proposed Rule abandons both, and instead adopts an ahistorical, unsupported new understanding of "usual residence," that will result in inaccurate census counts, undermining the Constitutional requirement to accurately determine the "respective Numbers" in each state.[80]

iii. The Proposed Rule does not provide an adequate explanation for the drastic changes it would implement.

---

[73] *Id.*

[74] Brown, et al., *supra* note 48, at 18 n.31 (noting that it can be difficult to identify a filers residence in IRS records because their filing reflects an address associated with their accountant, their business or a PO box).

[75] *See e.g.*, 26 C.F.R. § 301.6362-6 (defining residence for tax purposes as a "fixed or permanent home" or where an individual has the "intention to remain").

[76] Under the Servicemembers Civil Relief Act, 50 U.S.C. § 4001(a), servicemembers and their spouses have multiple options of where to claim residence for purposes of state income tax, typically including where the servicemember lived prior to enlisting, instead of requiring it to be where they currently live.

[77] *See* 26 U.S.C. § 6072 (setting April 15 as tax day).

[78] *See supra* Section I.a.iii. *See also Reynolds v. Sims*, 377 U.S. 533, 559, 577 (1964) (requiring congressional and state legislative districts to be "as nearly of equal population as is practicable.") *and Wesberry v. Sanders*, 376 U.S. 1, 10 (1964) (finding that the Framers intended that "no matter where he lived, each voter should have a voice equal to that of every other in electing members of Congress.").

[79] *See Wisconsin v. City of New York*, 517 U.S. at 19–20 ("[S]o long as the Secretary's conduct of the census is 'consistent with the constitutional language and the constitutional goal of equal representation,' it is within the limits of the Constitution.") (quoting *Franklin*, 505 U.S. at 804) *and Kravitz v. U.S. Dep't of Com.*, 336 F.Supp.3d 545, 562 (D. Md. 2020) ("The Supreme Court subsequently reaffirmed that the Census Clause itself creates limits on Congress' discretion . . . .") (citing *Utah v. Evans*, 536 U.S. 452, 479 (2002)); *see also Franklin*, 505 U.S. at 806 (finding that the Secretary of Commerce's decisionmaking was valid where it was "consonant with . . . the text and history of the Constitution," "d[id] not hamper the underlying constitutional goal of equal representation" and "ma[de] representation in Congress more equal . . . ."

[80] U.S. Const. art. I, cl. 2, § 3.

The Proposed Rule does not provide sufficient justification for the Census Bureau's decisions to abandon the long-settled understanding of usual residence by creating the new "census enumeration period" or by using tax records as evidence of a person's usual residence—changes that drastically break from previous residence rules and established practice. "[U]nbroken practice . . . is not something to lightly cast aside," and the Bureau must provide more here.[81]

The Bureau has provided only conclusory statements that it has "preliminarily determined" that relying on the census enumeration period "would be sufficient and appropriate for making a holistic determination about a person's 'usual residence' as of April 1" and that doing so "is preferable to leaving the issue open-ended and uncertain."[82] But the Census Bureau provides no evidence of past uncertainty in analyzing usual residence as of April 1, whether among census respondents, the Bureau itself, or any other stakeholders. The Bureau's Proposed Rule thus seeks to solve a problem that does not exist.

Moreover, the Proposed Rule provides scant support for the dates selected for the census enumeration period. The Proposed Rule states that January 3 is "the start" or "half-way point" of various congressional terms, but the relevance of the mid-point of a congressional term to the start of the census enumeration period is not explained.[83] No other rationale is provided. In the face of Congress's reasoned determinations during the enactment of the Census Act that a January date was insufficient given vacationing populations in the country's urban areas,[84] the Proposed Rule must say more.

The Proposed Rule is similarly silent as to why the Bureau concluded that tax documents are more probative of a person's "usual residence" than their stated usual residence on the census questionnaire or extensive administrative records the Bureau states it has access to.[85] Media reports have claimed that the Treasury Department itself questioned the Census Bureau's proposed use of tax records in Census enumeration.[86] The Census Bureau has provided no explanation, let alone a reasonable one, for its decision to rely on tax documents--particularly if the Treasury Department itself questioned that approach. Instead, a footnote in the Proposed Rule seems, if anything, to concede the potential infirmities of the reliance on tax documents—stating that review of tax records "will necessarily be situation dependent" and will consider "each particular data element's purpose, timing, and reliability"[87]—without any explanation for why, in spite of this, tax records are still the best evidence for enumeration. Moreover, the Proposed Rule provides no guidance, and at no point suggests that guidance will be forthcoming, on how the Bureau will consider "situation dependent" cases, resolve seeming conflicts between tax documents and where a resident is located during the new census enumeration period, or assess the "purpose, timing, and reliability" of any particular tax document.[88]

---

[81] *Walz v. Tax Comm'n of City of New York*, 397 U.S. 664, 678 (1970).
[82] Proposed Residence Criteria and Proposed Regulations, 91 Fed. Reg. at 57,526.
[83] *Id.*
[84] 13 U.S.C. § 141; *see also* William M. Steuart, *The Conduct of the Fourteenth Census*, 17 Q. Publ'ns of the Am. Stat. Assoc. 569, 572 (Mar. 1921).
[85] *See e.g.*, Proposed Residence Criteria and Proposed Regulations, 91 Fed Reg. at 57,526.
[86] Josh Kovensky & Layla A. Jones, *Exclusive: Commerce Overruled Treasury Concerns in Push to Narrow Census Count*, Talking Points Memo (Sep. 17, 2026), https://perma.cc/KD8J-7CFN.
[87] *See* Proposed Residence Criteria and Proposed Regulations, 91 Fed. Reg. at 57,528 n.7.
[88] *Id.*

Accordingly, the Bureau offers effectively no explanation for the use of tax documents and the departure from the long-understood operation of the census that the use of these documents represents. This lack of reasoned explanation raises serious doubts as to whether the Proposed Rule's stated goal of ensuring "the fidelity" of the census count "to the Constitution" and "improv[ing] and protect[ing] the core decennial census data,"[89] is, in actuality, pretextual, and whether the changes proposed were in fact significantly motivated by unstated or even unrelated reasons.[90]

iv. The Proposed Rule fails to consider important aspects of the problem.

The Proposed Rule fails to consider several key aspects of conducting an accurate and complete census enumeration. In particular, the Proposed Rule ignores operational challenges, and the likely malapportionment that will flow from the use of the census enumeration period and the reliance on tax documentation.

First, the Proposed Rule fails to consider several complications with the proposal to rely on tax documentation to demonstrate usual residence. In particular, the Proposed Rule fails to adequately address how it will resolve foreseeable conflicts between a person's address as provided on tax forms, and the address where they usually reside as defined by the Proposed Rule (*i.e.*, where a person spends the "greatest number of days" during the period between January 3 and April 1).[91] Defining usual residence as only where one spends the most days during the census enumeration period sets up inevitable conflict with tax records that reflect residency outside that limited window. The Bureau likewise has seemingly failed to consider issues that can arise when trying to match persons to their tax records. Many persons (for example, people living in poverty or college students) may not regularly file tax returns,[92] such that determining their residence through tax documents would be next to impossible. Instead, the Proposed Rule simply states that the Bureau will consider "situation dependent" cases or assess the "purpose, timing, and reliability."[93] Without more, the Proposed Rule does not demonstrate that the Bureau has actually considered these foreseeable problems.

Second, the Proposed Rule fails to consider the nonsensical application of the census enumeration period to military servicemembers stationed or assigned in the United States but deployed overseas on Census Day. The proposed rule specifies that such servicemembers would be "[c]ounted at their usual residence *in the United States*" as determined by the "residence at which they have lawfully spent the greatest number of days during the census enumeration

---

[89] *Id.*at 57,524.

[90] The current presidential administration's demonstrated antagonism to states and municipalities with Democratic leadership reinforces this concern. *See e.g.*, Thomas Frank, *Trump Overrode His Own Agencies to Deny 4 Democratic Disaster Requests*, Politico (July 29, 2026), https://www.politico.com/news/2026/07/29/fema-democratic-disaster-requests-trump-01013938; *and* Gary Grumbach and Kyla Guilfoil, *Trump Administration Concedes it Canceled Research Grants in Blue States*, NBC News (July 24, 2026), https://www.nbcnews.com/politics/trump-administration/trump-administration-concedes-canceled-research-grants-blue-states-rcna589129. This administration has also attempted to politicize the U.S. Census Bureau, *see* Layla A. Jones, *Census Quietly Changes Charter for Key Policy Committee, Opening Door for Political Interference*, Talking Points Memo (Sep. 11, 2026), https://perma.cc/5HF8-N3PL.

[91] *See supra* Section I.b.ii.

[92] *See generally*, 26 U.S.C. § 6012.

[93] Proposed Residence Criteria and Proposed Regulations, 91 Fed. Reg. at 57,528.

period."[94] But to the extent that such a servicemember has spent more than half of census enumeration period deployed outside the country, there is no such "usual residence in the United States." Moreover, without explanation, the Proposed Rule appears to rely on different tax and administrative records for military personnel in substantively similar living situations.[95]

Third, the Proposed Rule fails to consider the technical complexity of conducting a census count that is both accurate and complete under the Proposed Rule's requirements. "[T]he process of conducting the census is complex and technical,"[96] and requires extensive testing to get right.[97] Yet the Bureau has provided for no additional testing or study of the impact of the Proposed Rule. Nor is prior testing sufficient to cover these changes. The 2026 test, which is one of only two planned census tests before 2030, was conducted using a wholly different set of questions—the American Community Survey ("ACS") questionnaire—and relying on the long-settled understanding of usual residence jettisoned by the Proposed Rule.[98] This leaves, as currently announced, only the 2028 dress rehearsal to test the significant changes in the Proposed Rule.[99] If issues stemming from the changes proposed by the NPRM arise during the 2028 test—for example, a depression of response rates or misidentifications of usual residences through use of tax records—it is unclear how, or whether, the Bureau will have sufficient time to adjust their plans to conduct a complete and accurate census count in 2030.

Finally, the Proposed Rule fails to consider how a new definition of "usual residence" will frustrate the proper apportionment of political power between and within states. In addition to likely causing an incorrect census enumeration,[100] changing the definition of "usual residence" to the place where a person resides in the period between January 3, 2030 to April 1, 2030 will shift populations into areas where they do not spend the majority of the year, resulting in further malapportionment across and within States. For example, people who leave colder States in the north for warmer States in the south, often known as 'snowbirds,' would be counted as residents of these warmer States instead of the colder States where they live and work for the majority of the year. Similarly, those who leave urban areas for in-state vacation homes, would likely be counted away from their usual residence—undermining States' ability to comply with the constitutional principle of "one person, one vote" in designing congressional and other

---

[94] *See id.*at 57,529–30 (emphasis added).
[95] *Compare e.g.*, *id.*at 57,530 (relying on "using tax records and the administrative data provided by the Department of War and other federal agencies" for military personnel on military vessels with a home port in the United States) *and id.* (relying on "administrative data provided by the Department of War" for the same with a home port outside the United States).
[96] *NAACP v. Bureau of* Census, 382 F.Supp.3d 349, 364 (D. Md. 2019).
[97] *See* U.S. Census Bureau, *2030 Census Operation Plan* 12 (July 2025), https://perma.cc/V79G-H4KZ ("To attain this vision [of a complete and accurate count], especially for the hard to count, the Census Bureau spends years extensively planning, researching, and testing.").
[98] *See* Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; 2026 Operational Test in Support of the 2030 Census, 91 Fed. Reg. 4864 (Feb. 3, 2026). Similarly radical changes were implemented last minute for the 2026 test undermining its utility in testing the various systems for the 2030 census. Many of the Commenting States submitted a comment expressing concerns with the 2026 Census Test as well.
[99] *See 2030 Census Research and Testing*, U.S. Census Bureau (Sep. 16, 2025), https://perma.cc/BWD4-BMLF.
[100] *See supra* Section I.b.ii.

representative districts.[101] This contradicts the constitution's commands to create an accurate and complete count that ensures a fair distribution of political representation.

v. In determining where persons should be counted for the 2030 Census, the Proposed Rule fails to consider the States' strong reliance interests.

The Proposed Rule does not address reliance interests that the States have in ensuring that each person is counted where they actually reside. Census figures guide nearly all federal and state policy making, and without them the States will suffer numerous injuries.[102] For example, as discussed in further detail below, accurate and complete census figures are required for States to fund and operate their health and housing programs.[103] Improperly counting a person away from their usual residence—for example, because they are a "snowbird" on vacation or because they move close to Census Day—undermines States' ability to understand where their populations actually reside. Moreover, States rely on accurate and complete census enumeration to ensure adequate federal representation and the fair allocation of political power within their States.[104] Inaccurate census counts, including those that misrepresent where residents actually spend their time, not only deny States their rightful federal representation, but also prevent them from properly allocating political representation within their borders. The Proposed Rule, in proposing to count individuals in a place where they do not actually reside as of Census Day, discounts these crucial reliance interests.

II. THE CENSUS BUREAU SHOULD NOT REMOVE OR PROHIBIT DEMOGRAPHIC QUESTIONS ON THE DECENNIAL CENSUS

The Census Bureau's proposal to remove or prohibit certain demographic questions—namely regarding race, ethnicity, and sexual orientation—from inclusion in the decennial census questionnaire is inconsistent with over 200 years of tradition and would deprive state, local, and Tribal governments of crucial data that inform the development and evaluation of public policy, assist with enforcement of antidiscrimination laws, and provide the foundation for social-science research and public advocacy efforts.

Demographic data from the decennial census is needed to identify discriminatory patterns, including residential segregation, discriminatory lending and barriers to homeownership and wealth-building, environmental burdens disproportionately placed on communities of color, biased policing and sentencing practices, and voter suppression policies. Collecting and analyzing data disaggregated by race and ethnicity is essential so States can identify and address potential discrimination in housing employment, environmental, criminal justice, and election and voting policies. Such data is also critical for public health assessments, given variations in health risk profiles for different races and ethnicities. Removing these data from the decennial census will only obscure meaningful differences between groups and hinder State efforts to address systemic inequities.

---

[101] *Wesberry*, 376 U.S. at 10 ("One principle was uppermost in the minds of many [Constitutional] delegates: that, no matter where he lived, each voter should have a voice equal to that of every other in electing members of Congress.").
[102] *See* e.g., *Com. of Mass. v. Mosbacher,* 785 F. Supp. 230, 262 (D. Mass. 1992) ("The consequence of the census can be profoundly influential in the balance of advantage among competing partisan and parochial interests.") (*rev'd on other grounds by Franklin*, 505 U.S 788).
[103] *See infra* Section II.a.ii-iv.
[104] *See supra* Section I.a.iii.

a. The States Will Be Harmed if Race and Ethnicity Questions Are Removed from the 2030 Decennial Census

The Proposed Rule fails to consider both the States' longtime reliance on race and ethnicity data, which have been collected by the decennial census since 1790,[105] as well as the critical importance of these data to the States**.** The Bureau itself has long recognized the importance of collecting data on race, stating that "[i]nformation on race is required for many [f]ederal programs and is critical in making policy decisions, particularly for civil rights," and that "[r]ace data also are used to promote equal employment opportunities and to assess racial disparities in health and environmental risks."[106] The Supreme Court, moreover, has described the decennial census as "a linchpin of the federal statistical system."[107] Indeed, data on race and ethnicity are so crucial that statistical experts and grassroots communities have consistently advocated for more precise demographic questions in statistical research, including on the decennial census.[108] And the federal government recently issued new standards to make the collection of race and ethnicity data more precise—not less.[109] The Proposed Rule, however, does not address the importance of these data or how removing these data will harm the States.

i. No alternative data source can make up for the loss of decennial data on race and ethnicity.

There is no alternative data source that could make up for the loss of race and ethnicity data derived from the decennial census. The decennial census is the only questionnaire sent to every household in the nation that asks about race and ethnicity. Decennial census data are produced at the smallest unit of geography, the census block level.[110] As the PRIA acknowledges,

---

[105] Beverly M. Pratt, et al., *Measuring Race and Ethnicity Across The Decades: 1790–2010*, U.S. Census Bureau (Nov. 2, 2015), https://perma.cc/79UB-2N7A (discussing the evolution of collecting information on race and ethnicity since it was first collected in the 1790 census); *Research to Improve Data on Race and Ethnicity*, U.S. Census Bureau (Dec. 20, 2024), https://perma.cc/KC9Z-B74B (discussing the Bureau's collection of race and ethnicity data in its modern-day form since the 1980 census). *See also* Proposed Residence Criteria and Proposed Regulations, 91 Fed. Reg. at 57,527.

[106] *About the Topic of Race*, U.S. Census Bureau (Apr. 2, 2026), https://perma.cc/H75G-LNU7.

[107] *Dep't of Com. v. U.S. House of Representatives*, 525 U.S. 316, 341 (1999) (quoting Nat'l Rsch. Council, *Counting People in the Information Age* 1 (D. Steffey & N. Bradburn eds. 1994)).

[108] *See, e.g.*, Off. Mgmt. & Budget, *Federal Interagency Technical Working Group on Race and Ethnicity Standards, Final Recommendations Report* 16 (Mar. 28, 2024), https://perma.cc/66CB-TMCX ("MENA community members, experts, and organization leaders were invited to provide feedback on data collection plans for MENA respondents in the 2015 National Content Test. Nearly all participants were supportive of a separate 'MENA' category, citing reasons relating to health research, discrimination policy research, and community level data needs."). Additionally, the Census Bureau collected sexual orientation and gender identity ("SOGI") data for the first time on the Household Pulse Survey in 2021, which enabled the Bureau to shed light on inequities that the LGBTQ+ community faces in housing, employment, and public health. *See* Thom File & Joey Marshall, *Household Pulse Survey Shows LGBT Adults More Likely to Report Living in Households with Food and Economic Insecurity than Non-LGBT Respondents*, U.S. Census Bureau (Aug. 11, 2021), https://web.archive.org/web/20250131203144/https://www.census.gov/library/stories/2021/08/lgbt-community-harder-hit-by-economic-impact-of-pandemic.html.

[109] Revisions to OMB's Statistical Policy Directive No. 15, 89 Fed. Reg. 22,182–83; *see also* Off. of Mgmt. & Budget Interagency Tech. Working Grp. On Race & Ethnicity Standards, Presentation at the 2024 FCSM Research & Policy Conference: Final Recommendations from the Race and Ethnicity Interagency Working Group For Updating Statistical Policy Directive No. 15 (Oct. 22, 2024), https://perma.cc/ASD8-ZG4U.

[110] Katy Rossiter, *What are Census Blocks?*, U.S. Census Bureau Random Samplings Blog (July 11, 2011), https://perma.cc/R7GL-H425.

"there are no other comparably accurate, comprehensive, and reliable sources of this information," and the failure to collect race and ethnicity data on the decennial census would result in "less accurate data and would deteriorate the accuracy of the estimation method itself."[111]

Other statistical sources, like the ACS, are not a viable alternative because they are sample surveys that do not collect data from every household in the nation and provide data at only the larger, less granular census block-group level. Because the ACS is sample-based, block-group estimates often have large standard errors. Decennial census block-level counts do not have this limitation. More granular (*i.e.*, more specific) block-level data are important for identifying racial and ethnic disparities among communities and are particularly important for understanding the composition of small or rural communities with less dense populations.[112] Indeed, the PRIA that accompanied the Proposed Rule acknowledges that the ACS "does not provide accurate estimates" for "small population sizes."[113] And as discussed below, the quality of the ACS data is tied to the availability of the decennial census data.

ii. Race and ethnicity data derived from the decennial census are used for a wide range of critical public policy and research functions.

Countless stakeholders—including state agencies, businesses, civil society organizations, and social science researchers[114]—rely on race and ethnicity data directly from the decennial census and from related federal surveys and data sets to support many critical functions. The PRIA for the Proposed Rule itself lists many of those functions: "[n]umerous key dependencies have been structured around the reliable annual release of intercensal estimates for race and ethnicity, such as population controls for major federal surveys; denominators for crucial social and economic indicators (e.g., fertility/mortality rates, cancer rates, poverty rates, unemployment rates, labor force participation, etc.); required information for state and federal grants and other funding formulas; foundational data to support planning at the local level (infrastructure, real estate, and other investments); and essential inputs for countless research projects across academia, government, and the private sector."[115]

---

[111] PRIA, *supra* note 41, at 15.

[112] *See, e.g.*, *NHPI Data Policy Lab*, UCLA Ctr. for Health Pol'y Rsch., https://perma.cc/LZ3L-29GW (last visited Oct. 30, 2026) (describing how lack of disaggregated data on Pacific Islanders and Native Hawaiians has hindered the ability to address critical issues like health, well-being, education, and economic opportunity).

[113] PRIA, *supra* note 41, at 10.

[114] Census data "provide[s] a rich set of data on the communities they serve, including population trends and growth projections. Business owners rely on census results to make decisions, such as where to open new stores, restaurants, factories, and offices; where to expand operations; where to recruit employees; and which products and services to offer." *Why We Conduct the Decennial Census of Population and Housing*, U.S. Census Bureau (last updated Sep. 23, 2026), https://perma.cc/43G2-3TQP; *see also Can Census Bureau Data Drive Business Growth and Job Creation?*, U.S. Census Bureau (Oct.16, 2019), https://perma.cc/Y3HC-3MDF.

[115] PRIA, *supra* note 41, at 15. The Census Bureau elsewhere acknowledges the critical functions that are supported by decennial census demographic data: "[t]he results of the census help determine how trillions of dollars in federal funding, including grants and support to states, counties and communities are spent every year for the next decade. It helps communities get its fair share for schools, hospitals, roads, and public works. That funding shapes many different aspects of every community, no matter the size, no matter the location. *These funds are based on population totals and breakdowns by sex, age, race and other factors.* Your community benefits the most when the census counts everyone. The results also inform how federal funding is allocated to more than 100 programs, including Medicaid, Head Start, block grant programs for community mental health services, and the Supplemental Nutrition Assistance Program, also known as SNAP." *Why We Conduct the Decennial Census of Population and Housing*, U.S. Census Bureau (Sep. 23, 2026), https://perma.cc/43G2-3TQP (emphasis added).

The States' use of race and ethnicity data derived from the decennial census goes beyond even the lengthy list of uses noted in the PRIA. As detailed below, the States use decennial demographic data as the necessary denominator to analyze myriad racial and ethnic disparities and monitor changes over time.[116] The States also regularly rely on race and ethnicity data from other federal surveys and datasets that are intertwined with the decennial census, data which will be negatively impacted by the Proposed Rule as well.

For example, the States regularly use race and ethnicity data collected by the ACS, but because the ACS and the decennial census are "methodologically intertwined," removing race and ethnicity data from the decennial census directly degrades ACS quality.[117] Between censuses, the Bureau creates and revises population estimates, and the ACS relies on those estimates for its weighting methodology.[118] Without updated decennial race and ethnicity data every ten years, "ACS sampling weights, and therefore its population estimates, will become less reliable."[119]

Other major federal surveys similarly rely on population estimates that incorporate race and ethnicity data, including the Bureau's Population Estimates Program, the Current Population Survey, the Consumer Expenditure Survey, and various income and poverty statistics.[120] These datasets form the backbone of annual population estimates, national labor force statistics, economic indicators, and consumer-behavior research.

As detailed below, the States use these race and ethnicity data for a wide range of purposes, including to promote public education and inform policymaking, identify and address disparities, evaluate the effectiveness of programs, address discrimination and enforce civil rights protections, and inform redistricting and safeguard compliance with voting rights laws.[121]

iii. Demographic data are critical to identify and address disparities, to educate the public, and to inform policymaking.

The States rely on demographic data derived from the decennial census count to identify disparities, understand where needs are greatest, and target interventions effectively given limited resources. The States also use race and ethnicity data derived from the decennial census in many ways to inform the public and facilitate public participation, aid policy decisions, and encourage groundbreaking research.

1. Environmental Impacts

Race and ethnicity data provide critical information that the States use to assess disparities in environmental risks and to examine the ongoing environmental and public health impacts resulting from past discriminatory practices. Communities of color, low-income communities, and Indigenous Peoples and Tribal Nations, have traditionally borne a disproportionately high burden

---

[116] *See* Nat'l Rsch. Council, *Modernizing the U.S. Census*, app. D at 259 (Barry Edmonston & Charles Schultze, eds., 1995), https://doi.org/10.17226/4805.
[117] Vi D. Le & Melanie Klein, *The Public Health Cost of Eliminating Race and Ethnicity Data* at n.1, Fed'n of Am. Scientists (Sep. 4, 2026), https://perma.cc/4JH7-Z8SC.
[118] PRIA, *supra* note 41, at 12–13.
[119] *Id.* at 13.
[120] Marisa Hotchkiss & Jessica Phelan, U.S. Census Bureau, *Uses of Census Bureau Data in Federal Funds Distribution* 10–11 (Sep. 2017), https://perma.cc/4HNG-XPW6 (These datasets "use decennial census program data to determine sampling frames, to control and weight estimates, and/or as an input.").
[121] *Why We Ask Questions About Race*, U.S. Census Bureau, https://perma.cc/5MZB-3HBP (last visited Oct. 29, 2026).

of environmental and public health harms. Historic and ongoing disproportionate location of pollution sources,[122] toxic sites,[123] transportation infrastructure,[124] and underinvestment,[125] all contribute to legacy and current exposures that lead to negative health outcomes for these overburdened and under resourced communities.

Many States use race and ethnicity data derived from the decennial census to create mapping tools that identify these communities burdened by pollution and vulnerable to its health effects.[126] These mapping tools educate the public and provide users, including state agencies and regulated entities, with data to inform their decisions on the placement of facilities, permitting, enforcement, and infrastructure improvements. Maryland's mapping tool incorporates demographic overlays with the purpose of informing and educating the public.[127] Likewise, New Jersey's regulations implementing its Environmental Justice Law expressly rely on accurate demographic data from the decennial census to help identify overburdened communities.[128]

In the context of energy reliability, low-income Black homeowners have a disproportionately higher likelihood of experiencing energy insecurity than their low-income

---

[122] Landfills and incinerators, industrial facilities, concentrated agricultural operations, and other pollution sources have been and continue to be concentrated in communities of color, low-income communities, and Indigenous communities. *See* Ana Isabel Baptista et al., Tishman Env't & Design Ctr. at The New Sch., *U.S. Municipal Solid Waste Incinerators: An Industry In Decline* 13–16 (May 2019); Robert D. Bullard et al., *Toxic Wastes and Race at Twenty: Why Race Still Matters After All of These Years*, 38 Env't L. 371 (2008); Jill Johnson & Lara Cushing, *Chemical Exposures, Health, and Environmental Justice in Communities Living on the Fenceline of Industry*, 7 Current Env't Health Rep. 48 (2020). The impacts of such facilities are exacerbated by extreme weather. *See* T H. Orru, K. L. Ebi & B. Forsberg, *The Interplay of Climate Change and Air Pollution on Health*, 4 Current Env't Health Rep. 504 (2017), https://perma.cc/GY2P-M4DW.

[123] Allison R. Crimmins et al., U.S. Glob. Change Rsch. Program, *Fifth National Climate Assessment*, at 9-4 (2023), https://tinyurl.com/4j7a8j9v [hereinafter NCA5] ("[C]ontaminated sites, such as Superfund sites, face increasing exposure to rising groundwater and flood damages, which could lead to future public health and environmental concerns if buried contaminants are mobilized and enter groundwater or river systems[.]"); *Id.* at 15-13 ("[A]bout 70% of Superfund sites . . . are located within one mile of federally assisted housing, which disproportionately houses people of color, individuals with low wealth, and those with disabilities." (citations omitted)); U.S. Gov't Accountability Off., GAO-21-555T*, Superfund: EPA Should Take Additional Actions to Manage Risks from Climate Change Effects: Testimony Before the Subcomm. on Env. & Climate Change of the H. Comm. on Energy & Com.,* (May 13, 2021), https://perma.cc/7UEX-A3R4 (Statement of J. Alfredo Gómez, Dir., Nat. Res. and Env't).

[124] Deborah N. Archer, *Transportation Policy and the Underdevelopment of Black Communities*, 106 Iowa L. Rev. 2125, 2131–48 (2021), https://perma.cc/C85R-9984.

[125] *See* Haley M. Lane et al., *Historical Redlining Is Associated with Present-Day Air Pollution Disparities in U.S. Cities*, 9 Env't Sci. Tech. Letters 345 (2022); Cesar O. Estien et al., *Historical Redlining Is Associated with Disparities in Environmental Quality Across California*, 11 Env't Sci. Tech. Letters 54 (2024); Bev Wilson, *Urban Heat Management and the Legacy of Redlining*, 86 J. Am. Plan. Ass'n 443 (2020), https://perma.cc/9NMY-EQQB.

[126] *Understanding Environmental Justice in Minnesota*, Minn. Pollution Control Agency, https://experience.arcgis.com/experience/bff19459422443d0816b632be0c25228/page/Page?views=Air-pollution-score (last visited Oct. 30, 2026); *MDEnviroScreen-EJ Score,* Md. Dep't of the Env't, https://experience.arcgis.com/experience/e4148f01acf743bf8ac1d2aa2dc0947f/page/MarylandEJ3_0 (last visited Oct. 30, 2026); *Environmental Health Disparities Map*, Wash. Dep't of Health, https://experience.arcgis.com/experience/d133fa97a3854f8eac905ec152f16b05/page/Measures (last visited Oct. 30, 2026; *Connecticut Environmental Justice Mapping Tool Hub*, Conn. Inst. for Resilience & Climate Adaptation (CIRCA), https://ct-ejscreen-v1-connecticut.hub.arcgis.com/ (last visited Oct. 30, 2026); *Disproportionately Impacted Community Map*, Colo. Dep't of Pub. Health & Env't, https://www.cohealthmaps.dphe.state.co.us/DICommunity/ (last visited Oct. 22, 2026).

[127] *MDEnviroScreen-EJ Score,* Md. Dep't of the Env't, https://experience.arcgis.com/experience/e4148f01acf743bf8ac1d2aa2dc0947f/page/MarylandEJ3_0 (last visited Oct. 30, 2026).

[128] N.J. Admin. Code § 7:1C-2.3

white counterparts.[129] To evaluate and address disparities with energy reliability and disconnection rates across a utility company's service area, Minnesota's Public Utilities Commission ("PUC") relies on data maps[130] created using demographic data that would be degraded under the Proposed Rule. Removing race and ethnicity data would create long-term gaps in baseline demographic counts used in these mapping tools and would disrupt these important data collection projects aimed at evaluation of disparities, education, and engagement.

These tools also facilitate meaningful public participation during rulemaking and other processes requiring public engagement and input. For example, Minnesota law requires state agencies to consider the environmental impacts of major government actions and to provide the public with notice and an opportunity to comment on these actions.[131] Minnesota's mapping tool,[132] helps state agencies meet their statutory and regulatory requirements during the environmental review process. Agencies use the map, and its synthesis of race and ethnicity data derived from the decennial census, to determine whether to translate notice materials into different languages or provide language translation services at public meetings. Similarly, when planning public meetings on issues that affect overburdened or under resourced communities, including in rural areas, agencies use the map to ensure that people can attend by choosing appropriate and accessible locations. Using the map, agencies plan their engagement so that community concerns are heard, especially in overburdened and under resourced communities that have been historically overlooked in environmental review processes.

2. Public Health Impacts

In public health, decennial race and ethnicity data provide the necessary denominators to calculate rates of chronic disease and related conditions. The States rely on these data to maintain accurate public health dashboards and data portals with breakdowns by race and ethnicity—tools used every day by key stakeholders, including policymakers, local media, local governments, Tribal governments, businesses, and non-profits, among others.[133] For example, for nearly 30 years, the Minnesota Department of Health has published the Minnesota Cancer Surveillance System to guide cancer prevention and control efforts statewide.[134] Local, state, and national experts use these data to design interventions that reduce cancer risk, including expanding access to vaccinations, promoting cancer screenings, directing resources across health systems, and

---

[129] Jennifer Laird & Diana Hernandez, *Racial and Ethnic Disparities in the Relationship Between Homeownership, Income, and Energy Insecurity,* 36 Hous. Pol'y Debate 320 (2026), https://doi.org/10.1080/10511482.2025.2566012; *see also* Bhavin Pradhan & Gabriel Chan, Univ. of Minn. Ctr. For Sci., Tech., & Env't Pol'y, *Racial and Economic Disparities in Electric Reliability and Service Quality in Xcel Energy's Minnesota Service Area* (Feb. 2024), https://hdl.handle.net/11299/261434.

[130] *See, e.g.*, *Minnesota Service Quality-Electric,* Xcel Energy, https://experience.arcgis.com/experience/928c8b0e3cd3475fbb7c23b355c2df37 (last visited Oct. 23, 2026) (utility uses race and ethnicity data derived from the ACS 5-Year Summary file to overlay the locations of overburdened and under resourced communities (such as census block groups with populations of 50% or greater People of Color) with the location of energy assistance programs.

[131] Minn. Stat. ch. 116D; Minn. R. ch. 4410; *see* Minn. R. 4410.1500–1600, 4410.5000–5600.

[132] S*upra* note 130.

[133] *See, e.g.*, *Minnesota Public Health Data Access Portal*, Minn. Dep't of Health, https://perma.cc/F77F-9CWB (last visited Oct. 30, 2026); *Washington Tracking Network*, Wash. State Dep't of Health, https://perma.cc/VU35-G2PW (last visited Oct. 23, 2026); *Hawai'i Health Matters*, Haw. Health Data Warehouse & Haw. Dep't of Health, https://perma.cc/7NP9-NZG9 (last visited Oct. 30, 2026); *Data and Reports*, N.Y. State Dep't of Health, https://www.health.ny.gov/statistics/ (last visited Oct. 30, 2026).

[134] *Monitoring Cancer in Minnesota*, Minn. Dep't of Health, https://perma.cc/YEH6-C3EW (last visited Oct. 30, 2026).

identifying risk factors for particular cancers.[135] These decisions depend on understanding differences in cancer incidence and mortality by age, race, ethnicity, and geography.[136] So, too, in New York, where the state maintains the New York State Cancer Registry which provides data on disaggregated cancer rates to inform surveillance and programmatic efforts to disburse resources for cancer prevention, screening, diagnosis and survivorship.[137] Indeed, the federal government provided funding to state health departments for this purpose.[138] Similarly, California relies on demographic census data to identify disparities in maternal health and pregnancy-related mortality,[139] and to develop population projections that help local governments plan for aging residents.[140]

These data reveal gaps in healthcare access and guide outreach tailored to specific communities. For example, California used race and ethnicity data derived from the decennial census to improve its response to the COVID-19 pandemic, including working with community-based organizations to build trust, provide education, and increase vaccination rates.[141] Connecticut, too, has used race and ethnicity data in numerous vaccination-related programs to identify underserved communities and target outreach.[142] Similarly, Minnesota's Sage Screening Program illustrates how these data drive meaningful outcomes: facing markedly higher breast and cervical cancer mortality rates among American Indian and African American women, the State used demographic and health data to conduct targeted outreach and deploy resources where they would have the greatest impact.[143] Relatedly, New York has integrated Census race and ethnicity data into its Heat Vulnerability Index, which maps areas of the State with larger populations of people who may be more vulnerable to heat.[144] New York has also conducted studies that rely on Census race and ethnicity data to estimate health risks and rates of heat-related illness by demographic factors. These projects can help to inform policy solutions and contribute to greater health equity. Census-derived demographic data form a cornerstone of Washington's public health infrastructure as well. Measures such as birth and death rates, cancer and overdose rates, diabetes and heart disease prevalence, immunization coverage, and communicable disease trends all depend on census-based population figures. These data sources support the analysis of demographic

---

[135] *Id*.
[136] *Cancer Statistics and Reports,* Minn. Dep't of Health (Feb. 26, 2026), https://perma.cc/FCF6-E6ZW
[137] *New York State Cancer Registry and Cancer Statistics*, N.Y. State Dep't of Health (Apr. 2026), https://perma.cc/5Z5S-9GP3.
[138] *Cancer Prevention and Control Programs for State, Territorial, and Tribal Organizations (CDC-RFA-DP22-2202)*, CDC, Nat'l Ctr. For Chronic Disease Prevention & Health Promotion (Apr. 25, 2024), https://perma.cc/XT8Y-R4AQ.
[139] *Maternal Health Conditions at Delivery*, Cal. Dep't of Pub. Health, Maternal, Child & Adolescent Health Div. (June 2, 2026), https://perma.cc/5Z5S-9GP3.
[140] *MPA Data Dashboard*, Cal. Dep't of Aging, https://mpa.aging.ca.gov/DashBoard/ (last visited Oct. 30, 2026).
[141] *COVID-19 Equity Metrics (ARCHIVED)*, Cal. Health & Hum. Servs. Agency (July 24, 2026), https://perma.cc/3AZU-AK8S.
[142] *See, e.g.*, *COVID-19 Updated (Bivalent) Vaccination Coverage by Race/Ethnicity and Age Group – ARCHIVED* CT Open Data Portal (Aug. 7, 2023), https://perma.cc/9HZM-JHJC.
[143] *See, e.g.*, *About Sage Screening Programs*, Minn. Dep't of Health, https://perma.cc/N52C-DDCL (Jan. 7, 2025); News Release, Minn. Dep't of Health, Southwest Minnesota Partners Collaborate to Increase Breast Cancer Screenings (Sep. 18, 2024), https://perma.cc/8DEG-AJFY; *Cancer Screening Services Upgrade*, Minn. IT Servs. (Dec. 29, 2023), https://perma.cc/25R2-EFGR.
[144] *Heat Vulnerability Index*, N.Y. State Dep't of Health (July 2026), https://www.health.ny.gov/environmental/weather/vulnerability_index/.

factors, including race and ethnicity, at the local level to identify disparities, assess disease burden, and provide appropriate resources.[145]

States further rely on federal systems built on decennial census demographic data to identify disparities. The CDC's Behavioral Risk Factor Surveillance System ("BRFSS"), operated in partnership with state health departments, collects annual information on chronic diseases and provides a county-by-county view of health needs nationwide.[146] States use BRFSS data to identify disparities and plan health-promotion strategies. Minnesota relies on BRFSS to prioritize and plan its chronic disease work, including work to address asthma, arthritis, cancer, diabetes, and heart disease, so that the State can target its programs toward communities with the greatest need.[147]

3. Labor Impacts

Race and ethnicity data derived from the decennial census also underpin critical labor-market statistics. States use the Bureau's Quarterly Workforce Indicators to analyze employment outcomes across industries and demographic groups.[148] As another example, Minnesota uses the Current Population Survey—described above—to produce its Alternative Measures of Unemployment, which offers a more complete picture of the State's labor market by age, gender, and race.[149] California, too, depends on census-derived data for labor-market analyses and employment projections by race and ethnicity that it publishes monthly.[150]

These data allow states to identify and address gaps in the labor market. For example, the 2025 New Jersey Direct Care Workforce Strategic Plan utilized ACS data to define and describe the legal status, race, and ethnic makeup of the care economy workforce.[151] This demographic analysis revealed the diversity and socioeconomic characteristics of direct care workers, leading to recommendations for improved culturally competent training programs and enhanced benefits that address the workforce's specific socioeconomic needs, ultimately strengthening the State's capacity to provide quality care to older adults and individuals with disabilities. Without continued access to the same detailed race and ethnicity data, New Jersey will be unable to track progress on these strategic initiatives, measure whether interventions are effectively reaching and benefiting diverse workforce populations, or hold systems accountable for compliance with antidiscrimination and civil rights laws in the direct care sector.

4. Other Impacts

State transportation agencies rely on demographic data derived from the decennial census to forecast household growth and transportation demand. Washington's Department of Transportation, for example, needs a wide variety of demographic data, including race and

---

[145] *See, e.g., Data and Statistical Reports*, Wash. State Dep't of Health, https://perma.cc/65CV-9Q25 (last visited Oct. 30, 2026).
[146] Behavioral Risk Factor Surveillance System (BRFSS), CDC (Sep. 9, 2026), https://perma.cc/78AL-UJAZ.
[147] *Id.*; *see also, e.g.*, *Behavioral Risk Factor Surveillance System*, Minn. Dep't of Health (Dec. 16, 2025), https://perma.cc/QRK2-8NNQ.
[148] U.S. Census Bureau, *Quarterly Workforce Indicators 101,* at 3 (Mar. 10, 2026), https://perma.cc/F5L2-5F6R (noting that the decennial censuses are a source for data on race and ethnicity).
[149] Alternative Measures of Unemployment, Minn. Dep't of Emp. & Econ. Dev., https://perma.cc/J47L-GEGP (last visited Oct. 30, 2026).
[150] See, e.g., *California Demographic Labor Force Summary Tables*, Cal. Econ. Dev. Dep't (Sep. 2026), https://perma.cc/97Z6-4F3L.
[151] *Direct Care Workforce Strategic Plan,* N.J. Dep't of Hum. Servs. (Dec. 2025), https://perma.cc/55QZ-SN7Q.

ethnicity data, to produce accurate projections for urban and regional planning, social-services planning, and transportation infrastructure.[152] Additionally, the Maryland Transit Administration uses these data to develop transit equity analyses to evaluate service changes and ensure equal access to transportation networks.[153]

States likewise use race and ethnicity data derived from the decennial census during emergencies and natural disasters. California operates a statewide mapping tool that helps officials plan evacuations, prioritize resources, and coordinate logistics.[154] Demographic data, in particular, help emergency managers understand how and where trusted messengers can best reach communities with evacuation orders and other urgent information in critical moments. Maryland similarly may use demographic data to inform effective communication before, during, and after emergencies, especially with residents who speak languages other than English.

State universities and research institutions depend on race and ethnicity data derived from the decennial census as the benchmark for studying U.S. population trends. Faculty across fields—including business, medicine, public health, engineering, urban planning, and the social sciences—use these data to ground their research.[155] Researchers also rely on these demographic estimates to design representative sampling frameworks for scientific surveys. At the University of Washington, for instance, race and ethnicity data support research on dementia, caregiving, health-care utilization, and the social and demographic factors that shape health across the life course.[156]

Additionally, States use these data to improve outcomes for aging populations. Multiple States also utilize the Elder Economic Security Index ("Elder Index") developed by UMass Boston,[157] which is based on data from several Census tools like ACS and the Population Estimates Program,[158] to measure income adequacy and determine service needs for older residents. New Jersey's Department of Human Services is required by state law to produce county-level cost of living reports using this data and estimate the number of older adults living below the Elder Index threshold, disaggregated by race and housing categories.[159] This racial disaggregation is critical for revealing economic disparities among older adults, enabling policymakers to identify which

---

[152] *See, e.g.,* Wash. Dep't of Transp., *Collecting Demographic Data* (Oct. 2023), https://perma.cc/7JS2-EBPQ; Wash. Dep't of Transp., *Washington Statewide Human Services Transportation Plan* 91 (2022), https://perma.cc/FPR6-GPQQ.

[153] Md. Code Ann., Transp. § 7-716.

[154] *See* Kattya Trinh, Cal. Health & Hum. Servs. Agency, *Missing Link Found: CalHHS All-Hazards Dashboard, 2023 NASCIO Award Submission* 4–5 (2023), https://perma.cc/2AFX-Y4LS.

[155] *See, e.g.*, Steven Ruggles et al., Univ. of Minn. Inst. for Soc. Rsch. & Dev., *Bibliography for "Topic: Race and Ethnicity,"* IPUMS USA: Version 16.0 [dataset], https://perma.cc/2QN6-A9R8 (last visited Oct. 30, 2026) (showing the published sources using race and ethnicity data from the IPUMS USA dataset, which includes data from "decennial censuses from 1790 to 2010," *Projects: IPUMS USA*, IPUMS, https://doi.org/10.18128/D010.V16.0 (last visited Oct. 30, 2026)).

[156] *See, e.g.,* Franklin Faust & Genevieve Wanucha, *Prescriptions for Prevention of Alzheimer's and Related Dementias*, Univ. of Wash. Memory & Brain Wellness Ctr. (Nov. 29, 2020), https://perma.cc/C3D8-GRGL; *Native AD Research Education & Resources*, Univ. of Wash. Alzheimer's Disease Rsch. Ctr., https://perma.cc/7N27-NT2G (last visited Oct. 30, 2026).

[157] *Elder Index*, UMass Boston, https://perma.cc/E2E4-2Z9R (last visited Oct. 28, 2026).

[158] Jan Mutchler, et al., UMass Boston Ctr. for Soc. & Demographic Rsch. on Aging, *The Elder Economic Security Standard Index: Methodology Overview* 3 n.1 (March 2026), https://perma.cc/47UK-A3FR.

[159] *See, e.g.*, N.J. Dep't of Hum. Servs., Div. of Aging Servs., *N.J. Elder Econ. Sec. Standard Index, 2022* (Aug. 2024), https://perma.cc/7SSD-AMAC.

communities—particularly communities of color who face systemic economic barriers—experience the greatest insecurity.

States also use these data to analyze outcomes for children in the child welfare system. For example, Connecticut routinely uses data disaggregated by race, ethnicity, and other demographics to inform strategies to eliminate disparate outcomes within the child protection system.[160] Minnesota's child welfare program also relies extensively on census race and ethnicity data in many of its internal data dashboards, which are used to develop annual reports for the Minnesota legislature on the child welfare system.[161]

Finally, state criminal justice and human service agencies use race and ethnicity data to analyze disparities within incarcerated and impacted populations, informing policy reforms and resource allocation.[162]

***

If the decennial census count no longer collects race and ethnicity data, the States will lose the ability to accurately identify, track, and address disparities over time. The States have limited funds, and these data are essential in ensuring the States effectively use their limited resources to address inequities and improve outcomes for all residents. Moreover, without reliable race-specific data, vulnerable populations risk remaining invisible in policymaking and planning processes, perpetuating inequities for those most in need. Removing race and ethnicity data from the decennial census would therefore compromise the accuracy of the tools that state agencies, policymakers, researchers, and many others rely on to understand population trends, monitor disparities, and make informed decisions.

iv. Demographic data help States evaluate the effectiveness of programs.

The States also rely on race and ethnicity data derived from the decennial census to set program goals and to measure whether interventions are working. These data provide the benchmarks needed to evaluate progress toward critical statewide objectives.

Washington's Department of Children, Youth, and Families, for example, relies on estimates derived from the decennial census to track outcome measures tied to its strategic goal of eliminating racial disproportionality in child welfare.[163] Accurate demographic data are essential so that the agency can determine whether disparities are narrowing and whether its initiatives are reaching the communities most affected. Similarly, federal and state law require Minnesota to review its child support guidelines every four years to ensure their application produces fair and appropriate child support award amounts.[164] The review includes analysis of child support case data and consideration of economic and labor market conditions, including effects on low-income

---

[160] Conn. Dep't of Child. & Fams., *Report on Racial Justice Data, Activities and Strategy* 6–12 (Feb. 15, 2024), https://perma.cc/Q3L8-5GAC .

[161] *See, e.g.*, Minn. Stat. § 257.0725 (requiring an annual report of children in out-of-home placement that includes breakdowns by age, sex, and race, among other factors).

[162] *See, e.g.*, *Data Resource Guides*, Md. Dep't of Juvenile Servs., https://perma.cc/3NWN-J6ND (last visited Oct. 30, 2026); *Juvenile Detention Admissions Dashboard* Wash. State Ctr. for Ct. Rsch., https://perma.cc/2UNH-GR7B (last visited Oct. 30, 2026).

[163] Wash. Dep't of Child., Youth & Fams., *Disproportionality & Disparity in Child Welfare Dashboard*, https://perma.cc/4862-8V8Y (last visited Oct. 30, 2026).

[164] 42 U.S.C. § 667(a); 45 C.F.R. § 302.56(h)(1)–(3); Minn. Stat. § 518A.77; *see also Child Support Guidelines Review*, Minn. Dep't of Child., Youth & Fams. (Sep. 15, 2026), https://perma.cc/CB8C-T3KH.

parents. Reliable census-derived economic and demographic information, including race and ethnicity data, can support this work by providing context about Minnesota families and communities.

The collection of decennial race and ethnicity data is also key for evaluating efforts to close opportunity gaps in education. In 2015, the Minnesota Legislature set a statewide higher-education attainment goal: ensuring that 70 percent of Minnesota adults hold a postsecondary certificate or degree by 2025.[165] Minnesota uses census data to measure progress toward this target and to assess whether its strategies are successfully expanding access and improving completion rates for historically underrepresented groups, including American Indian, Black, and Latino Minnesotans.[166]

Additionally, Minnesota's PUC uses the utility map described above[167] to evaluate utility programs and gaps in services. The PUC oversees different affordability programs across the State. It uses the utility map to understand where and why eligible customers are not enrolling in those programs and then works in collaboration with stakeholders to fill those gaps. Similarly, the Connecticut Green Bank uses race and ethnicity data derived from the decennial census to evaluate whether programs aimed at clean energy accessibility and affordability reach historically underserved communities. The Connecticut Green Bank uses the data to target outreach to these communities and supports independent research to inform and address gaps in program distribution.

Further illustrating the continued importance of this data, the federal government requires states and other funding recipients to submit reports on how they serve certain populations as part of their strategic planning across a variety of programs. For example, the U.S. Department of Housing and Urban Development requires the States to submit a "Consolidated Plan" that relies on census-derived racial and ethnic demographic data to help inform equitable housing strategies.[168] Similarly, the U.S. Department of Health and Human Services, which administers funding under the Family Violence Prevention and Services Act,[169] requires state applications to identify underserved populations using race and ethnicity data and describe how such populations

---

[165] Minn. Stat. § 135A.012, subd. 2.

[166] Lesley Sisaket, Minn. Off. of Higher Educ., *Educating for the Future* 1–2 (Oct. 2025), archived at https://perma.cc/T9UN-KRU8.

[167] *Supra* note 130 and accompanying text.

[168] *See* 24 C.F.R. § 91.205(a) and (c)(ii) (requiring "a brief narrative description of the nature of extent of homelessness by racial and ethnic group"); 24 C.F.R. § 92.210(a)(3) (requiring the description of "any areas with concentrations of racial/ethnic minorities and/or low income families"); 24 C.F.R. § 91.520 (requiring a "performance report" describing actions taken to affirmatively further fair housing, including the "racial and ethnic status of persons assisted"). *See also* 1 Dep't of Hous. & Urban Dev., Off. of Fair Hous. & Equal Opportunity, *Fair Housing Planning Guide*, at 2-29, 3-8 (March 1996), https://perma.cc/SL8Z-E4R8.

[169] 42 U.S.C. § 10406(a)(3) (requiring States to "provide specialized services for …victims who are members of racial and ethnic minority populations"); 42 U.S.C. § 10407(a)(2)(E) (requiring the application to describe how the States will "provide culturally appropriate services to underserved populations"); 34 U.S.C. § 12291(a)(46) defines "underserved populations" to include "populations underserved because of geographic location, religion, sexual orientation, gender identity, underserved racial and ethnic populations, populations underserved because of special needs."

are being targeted for outreach and services.[170] The U.S. Department of Labor also requires the States to submit reports under the Workforce Innovation and Opportunity Act that track the number of participants in federally funded workforce development programs by race, ethnicity, sex, and age.[171] And the U.S. Department of Justice administers the STOP Violence Against Women Formula Program, which requires States to submit demographic data on the distribution of underserved populations and to describe how they will meet the needs of such populations.[172]

Without these data, the States would lose the ability to evaluate the effectiveness and viability of important state programs and goals. Similarly, the Proposed Rule's unexplained changes to how and where people are counted would make comparisons across census years impossible, limiting States' ability to identify trends and track progress made on these initiatives.

v. Demographic data are important to identify and address discrimination and enforce civil rights protections.

The States use demographic data derived from the decennial census to identify and address discrimination on the basis of race, ethnicity, or national origin and enforce civil rights laws, at both the state and federal level, in a range of contexts such as housing, employment, education, and public safety.

For instance, in housing law and policy, race and ethnicity data inform whether and how a particular housing policy or practice has a greater adverse impact on a protected population. These data can help investigators identify targets of disparate treatment as well as ensure effective communication with impacted communities who might not speak English.

The States also use race and ethnicity data to identify and address workplace discrimination. Some States' Equal Employment Opportunity programs use decennial census demographic data for workplace-specific civil rights enforcement, investigations, workforce trends, and discrimination prevention. For example, Washington uses such data in investigations to compare an employer's demographic make-up with the demographic make-up of the community in which the employer is located.

Additionally, the States use race and ethnicity data to enforce state and federal civil rights protections.[173] Courts routinely consider race and ethnicity data when a plaintiff seeks to establish intentional discrimination based on race or national origin in a range of civil rights contexts.[174] For example, California has used data derived from the decennial census to identify potential instances of intentional discrimination, including to support a finding that a company engaged in

---

[170] 45 C.F.R. § 1370.10(b)(2). 45 C.F.R. § 1370.2 defines "underserved populations" to include "populations underserved because of geographic location, religion, sexual orientation, gender identity, underserved racial and ethnic populations, and populations underserved because of special needs including language barriers, disabilities, immigration status, and age."

[171] *See* 29 U.S.C. § 3245(d)(1)(A); 20 C.F.R § 677.230(a)(1)(ii); 20 CFR § 677.160(a)(2)(iv).

[172] *See* 34 U.S.C. § 10446(i)(2)(E); *id.* § 12291(a)(46) (defining underserved populations to include "underserved racial and ethnic populations").

[173] *See Washington v. Davis*, 426 U.S. 229, 242, (1976) (underscoring how disparate impacts can be evidence of intentional discrimination); *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977) (same).

[174] *Hazelwood Sch. Dist. v. United States*, 433 U.S. 299, 308 n.13 (1977) (a showing of statistical disparities using race data from the general areawide population can be highly probative); Statement of Interest of the United States of America, *CNY Fair Hous., Inc. v. Swiss Vill., LLC,*, No. 5:21-cv-1217 (N.D.N.Y. Apr. 1, 2022) (No. 19) (in action against landlord who had a policy of excluding non-English speakers, census data cited in complaint supports plausible allegations of disparate impact and intentional discrimination).

discriminatory home appraisal practices in violation of California's fair housing law.[175] California has also relied on census data to analyze potential claims of discrimination in cases involving tenant screening for criminal history, challenges to land use polices and decisions, and challenges to source-of-income practices, such as an allegation that a policy of evicting voucher holders is motivated by race.

The States also use race and ethnicity data to address discrimination in public safety contexts as well. Some States have used these data to investigate over-broad criminal bans or patterns of potential discriminatory police stops.[176] California publishes an annual report on hate crimes in the State that relies on census data to determine community-specific patterns and trends.[177] Accurate data are important to meet state statutory obligations to provide a comprehensive accounting of hate crimes in California and to develop recommendations that enhance the State's efforts to prevent and respond to hate crimes targeting racial or ethnic groups.

Without race and ethnicity data, these important state government functions to address discrimination and enforce civil rights protections would be significantly impeded. States would further experience increased administrative burdens to collect and verify our own data to make up for the loss of demographic data derived from the decennial census. And new, varied, or inconsistent data collection methodologies introduce increased risk of inaccuracies. The Bureau has failed to account for these important reliance interests in the Proposed Rule.

vi. States rely on demographic census data to comply with voting rights laws.

Race and ethnicity data from the decennial census also inform state redistricting efforts and help ensure compliance with federal and state voting rights laws. The Bureau provides redistricting data to the States following the decennial census in the form of P.L. 94-171 redistricting files.[178] According to the Bureau, "[s]ince the first Census Redistricting Data Program, conducted as part of the 1980 census, the U.S. Census Bureau has included summaries for the major race groups specified by the Statistical Programs and Standards Office of the U.S. Office of Management and Budget ("OMB") in Directive 15."[179] Guidelines for the 2030 Census Redistricting Data Program —a collaborative program between the Census Bureau and the States required under 13 U.S.C. § 141(c)—emphasizes this.[180]

---

[175] *See* Press Release, State of Cal. C.R. Dep't, Civil Rights Department Announces Settlements Over Alleged Appraisal Discrimination Against Black and Latino Family in the Bay Area (Apr. 14, 2025), https://perma.cc/NP2V-CT5S.

[176] *See, e.g.*, *Connecticut Racial Profiling Prohibition Project*, UCONN Sch. of Pub. Pol'y, Inst.for Mun. & Reg'l Pol'y, https://perma.cc/K7AJ-3WQB (last visited Oct. 30, 2026).

[177] *See* State of Cal., C.R. Dep't, *2024–2025 Annual Report: Commission on the State of Hate* 45 (2026), https://perma.cc/W3T3-6NGV ("In 2023, though only 5% of Californians identified as Black, anti-Black hate crime events made up over 26% of all hate crime events recorded in the California DOJ's 2023 Hate Crime in California report.").

[178] U.S. Census Bureau Redistricting & Voting Rts. Data Off., *Decennial Census P.L. 94-171 Redistricting Data*, U.S. Census Bureau (Nov. 29, 2023), https://perma.cc/HQ5Y-X75F.

[179] *Id*.

[180] *See* Colleen Joyce et al., U.S. Census Bureau, *Designing P.L. 94-171 Redistricting Data for the Year 2030 Census: The View From the States* 15–16 (Dec. 2024), https://perma.cc/397M-7MB8 ("States will continue to require the data available in the P1, P2, P3, and P4 tables included in the 2020 redistricting data (Table 2), which included breakdowns by race and ethnicity groups, to meet federal and state Voting Rights Act requirements.").

Race and ethnicity data help ensure that map drawers comply with voting rights laws. Many States have voting rights laws that prohibit racial discrimination, and evidence of racially polarized voting is used to establish violations of those laws.[181] If the Bureau does not provide race and ethnicity data to the States in the P.L. 94-171 files, the ability to conduct accurate racial polarization analyses to determine compliance with state laws will be greatly diminished. In particular, having accurate race and ethnicity data available during the redistricting process helps prevent violations of state voting-rights laws, which in turn helps the States prevent lengthy, costly voting rights litigation that can result in courts ordering maps to be redrawn between census years. Having accurate race and ethnicity data also enables state and county governments, in consultation with Tribal governments, to improve voter participation and access to the polls in Native communities, which historically have faced structural barriers to voting.[182]

Moreover, race and ethnicity data allow residents to advocate for their communities during the redistricting process. For example, California maintains a statewide redistricting database with data on California's population that is sourced from the decennial census.[183] The database is a public resource that anyone can use to see the makeup of communities and propose districts to the California Citizens Redistricting Commission. Data from California's redistricting database allow communities to advocate for their needs during the redistricting process.[184] Public input is a crucial element of California's independent redistricting process and is required by the State's constitution.[185] Without decennial census data to accurately inform the redistricting database, there would not be a robust public resource available for all Californians to use to participate in the redistricting process.

b. The Bureau Fails to Justify the Proposed Rule's Significant Change in Policy.

The Bureau offers several reasons for seeking to prohibit questions about race, ethnicity, and sexual orientation from the decennial census questionnaire. None reasonably supports its proposal, nor satisfy the Supreme Court's requirement that agencies "provide a more detailed justification" for its proposed change to longstanding agency practice.[186]

i. The Bureau's arguments regarding response rates and accuracy are unsupported.

First, the Bureau states that questions about race, ethnicity, and sexual orientation do not advance the purpose of the decennial census to ascertain the population count for apportionment, claiming that "in general," more questions on the decennial census questionnaire lead to a lower

---

[181] *See* Cal. Elec. Code § 14028; Colo. Rev. Stat. § 1-47-106; Conn. Gen. Stat. § 9-368j; Del. Code Ann. tit. 15, § 8103; Md. Code Ann., Elec. Law § 15.7-103; Minn. Stat. § 200.54; N.J. Stat. Ann. § 19:4A-6; N.Y. Elec. Law § 17-206; Or. Rev. Stat. § 255.411; Wash. Rev. Code § 29A.92.030; Va. Code Ann. § 24.2-126.1.

[182] *See* Megan A. Gall et al., Native Am. Rts. Fund, *Obstacles Persist: According to the Data, Barriers to Political Participation Faced by Native American Voters* (2026), https://perma.cc/NM45-R3VS.

[183] *The Redistricting Database for the State of California*, Statewide Database, https://perma.cc/9QX9-DVD4 (last visited Oct. 30, 2026).

[184] 2020 Cal. Citizens Redistricting Comm'n, *Report on Final Maps* 12 (Dec. 26, 2021), https://perma.cc/5VRF-KCKR (describing goal of commission "to ensure Californians' engagement was *representative*. In other words, the Commission sought to elicit input from individuals and groups so that the redistricting process equitably reflected the voices of California's diverse population").

[185] Cal. Const. art. XXI, § 2(b) (requiring California's redistricting commission to "conduct an open and transparent process enabling full public consideration of and comment on the drawing of district lines").

[186] *Fox Television Stations*, 556 U.S. at 515

overall response rate.[187] But the Bureau relies on two sources that do not support its proposed ban. The Bureau first cites to its earlier finding that more people responded to the 2000 Census short-form questionnaire (six-pages long) than to the 2000 Census long-form questionnaire (forty-pages long).[188] But a finding that fewer people responded to a survey that was nearly seven times the length of another provides little insight into whether fewer people would respond to a survey that included one question about race and ethnicity and one question about sexual orientation.[189] The Bureau also cites a 1992 Bureau paper comparing response rates for different survey designs.[190] But this paper found households were likely to respond to a survey that included five questions about name, age, gender, ethnicity, and race, than to respond to a survey that included only two questions about name and birthdate.[191]

The Bureau's blanket assertion that more questions generally lower response rates is thus unsupported—and is actually contradicted by one of the Bureau's own cited sources. The Bureau has also not attempted to conduct any independent study or test whether a single question on race and ethnicity, or a single question about sexual orientation, suppresses response rates.[192] And its claimed reliance on a desire to reduce respondent burden and increase response rates is belied by the Bureau's evident intent to add a citizenship question to the 2030 Census. A citizenship question is known to depress response rates,[193] yet the Bureau does not appear to consider depressed response rates a problem in the context of that question. The stated concern about depressed responses rates when discussing these demographic questions, and indifference when discussing a citizenship question, suggests that the professed concern is a mere pretextual rationale.

The Bureau also ignores that collecting and considering racial and ethnic data allows the Bureau to conduct a more (not less) accurate count. Since the 1940 Census, the Bureau has documented that certain races are consistently undercounted. In the 1990 Census, for example, the Bureau documented a net undercount of 4.4% for Black people, 5% for Hispanic people, and 12.2% for American Indians on reservations.[194] In 2020, the Census once again disproportionately undercounted people of color, with the Hispanic or Latino undercount rate more than tripling from

---

[187] *See* Proposed Residence Criteria and Proposed Regulations, 91 Fed. Reg. at 57,527.

[188] See id. at 57,528–29 n.8, citing Cong. Rsch. Serv., R41532, *The American Community Survey: Development, Implementation, and Issues for Congress* 3 n.11 (Dec. 19, 2014), https://perma.cc/82VH-WWFW; see also *2000 Census Short-Form Questionnaire,* U.S. Census Bureau, https://perma.cc/4WDB-NGU2 (last visited Oct. 30, 2026); *2000 Census Long-Form Questionnaire*, U.S. Census Bureau, https://perma.cc/8TET-U6VF (last visited Oct. 30, 2026).

[189] Under a 2024 federal directive on the collection of race and ethnic data, the race and ethnicity question would be a single, combined question. *See* Revisions to OMB's Statistical Policy Directive No. 15: Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity, 89 Fed. Reg. 22182 (Off. of Mgmt. & Budget, Mar. 29, 2024) (notice of decision).

[190] *See* Proposed Residence Criteria and Proposed Regulations, 91 Fed. Reg. at 57,528–29 n.8, citing Don Dillman et al*., Mail-back Response Rates for Simplified Decennial Census Questionnaire Designs* (1992), https://perma.cc/DP7W-4YTA .

[191] *See* Don Dillman et al., *supra* note 190, at 777–78, 780.

[192] *See supra* at Section I.b.iv (discussing that the Bureau has departed from its own standards for testing questions).

[193] David Brown & Misty L. Heggeness, *Citizenship Question Effects on Household Survey Response*, 45 J. Pol'y Analysis & Mgmt. (Mar. 20, 2025), https://doi.org/10.1002/pam.70004; Brown & Heggeness, *supra* note 53.

[194] Accuracy and Coverage Evaluation; Statement on the Feasibility of Using Statistical Methods To Improve the Accuracy of Census 2000, 65 Fed. Reg. 38,374, 38,377 (Dep't of Com., U.S. Census Bureau June 20, 2000) (notice); *see also Wisconsin v. City of New York*, 517 U.S. 1, 7 (1996).

2010, and American Indians on reservations again having the largest.[195] Identifying these undercounts and researching their underlying causes allows the Bureau to take steps to address them and produce a more accurate count for purposes of apportionment. For example, to help reduce undercounts of Hispanic populations, the Bureau for the first time in 2010 distributed bilingual census forms to areas with a high concentration of Hispanic families.[196] Removing questions on race and ethnicity would halt the Bureau's ability to identify persistent undercounts or research how to reduce them in the future. In effect, it would hide but not eliminate undercounts, perpetuating undercounts and ensuring a *less* accurate count moving forward.

ii. The Bureau's privacy arguments are unsupported.

The Bureau also asserts that asking demographic questions increases the likelihood that respondents can be identified, compromising their privacy.[197] But the Bureau has collected data about race or ethnicity for centuries, and it provides no evidence of people being identified as a result. The Bureau also acknowledges that it already uses "disclosure avoidance" techniques to protect confidentiality, with no suggestion that these techniques are somehow inadequate.[198] Indeed, the Bureau has publicly represented that "no one is able to figure out [respondents'] survey answers from the statistics we produce."[199] To the extent that the Bureau has concerns about demographic questions (or too many demographic questions) causing people to be identifiable, it offers no explanation about why questions on these topics in particular, as opposed to other demographic questions (including on sex and age), pose a problem for maintaining confidentiality. This again suggests that the Bureau's offered concerns are simply pretextual.

iii. The Bureau's reliance on purported "evolving understandings" about race and ethnicity is unsupported and cannot justify the Bureau's proposed changes.

The Bureau states that evolving understandings about race and ethnicity—including whether race is a social construct, something the federal government has said for decades[200]—have prompted it to further consider the need for the data.[201] It then states that on further consideration, it has determined that the "(potentially) sensitive nature of questions about race, ethnicity, and sexual orientation, when considered in light of the reduced need for or usefulness of this information, may be a particular encumbrance on response" given that respondents can be

---

[195] Shadie Khubba, et al., U.S. Census Bureau, *National Census Coverage Estimates for People in the United States by Demographic Characteristics* 7 (Mar. 2022), https://perma.cc/QB69-44Y3; *see also* Press Release, U.S. Census Bureau, U.S. Census Bureau Releases Estimates of Undercount and Overcount in the 2020 Census (Mar. 10, 2022), https://perma.cc/JD85-ARUZ.

[196] Deborah Stempowski, *Counting Every Voice: Understanding Hard-to-Count and Historically Undercounted Populations*, U.S. Census Bureau Random Samplings Blog (Nov. 7, 2023), https://perma.cc/JD85-ARUZ; Cynthia A. Rothhaas, et al., U.S. Census Bureau *2010 Census: Bilingual Questionnaire Assessment Report*, (Oct. 27, 2011), https://perma.cc/E9WC-L5P4.

[197] *See* Proposed Residence Criteria and Proposed Regulations, 91 Fed. Reg. at 57,527.

[198] *See id*.

[199] U.S. Census Bureau, *Why We Ask Questions About Race*, *supra* note 121.

[200] Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity, 62 Fed. Reg. 58,782 (Off. Mgmt. & Budget, Oct. 30,1997) (notice of decision).

[201] *See* Proposed Residence Criteria and Proposed Regulations, 91 Fed. Reg. at 57,527.

fined up to $100 if they refuse or willfully neglect to answer census questions to the best of their knowledge.[202]

But as discussed above, the Bureau never tested its speculative concern about reduced response rates.[203] Nor does it offer any explanation for its statements that these questions have a "(potentially) sensitive nature" and that there is a "reduced need for or usefulness of this information."[204] The discussion above, moreover, demonstrates not only that the States need and use this information but also that the federal government requires States to submit reports to evaluate the impact of federal programs on underserved populations, including racial and ethnic minorities.[205] The PRIA also acknowledges the continued importance of this information.[206] And this information remains important even if some perceptions about race and ethnicity have changed. After all, race and ethnicity still play a role in our society, both in fact and in law, and collecting demographic data still remains critical for the States, including to identify and prosecute acts of intentional racial discrimination.[207] Yet, the Census Bureau ignores all these considerations in the Proposed Rule.

The Bureau further ignores the OMB statistical policy directive favoring more (not less) disaggregated, granular demographic data on the population in order to reflect evolving understandings about race and ethnicity. OMB initially adopted this directive—called Statistical Policy Directive No. 15: Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity ("SPD 15")—to standardize the recordkeeping, collection, and presentation of data on race and ethnicity in federal programs.[208] In 2024, following the recommendations of a working group that the Bureau co-chaired, OMB adopted revisions to SPD 15 that, among other things, (1) added Middle Eastern or North African ("MENA") as a reporting category distinct from the white category, and (2) generally required federal agencies to collect "more detail" beyond the minimum race and ethnicity reporting categories.[209] The Bureau's proposal ignores, and is at odds with, this directive.

iv. The Bureau's proposal to rely on other "administrative records" is vague and unsupported.

Next, the Bureau states that its proposal "reflects" its plans to increase its use of "[a]dministrative records sourced from other governmental agencies—including certain tax-return

---

[202] *See id.*, citing 13 U.S.C. § 221.

[203] *See supra* Section I.a.iii (discussing fear of reduced response rates). *See also* PRIA, *supra* note 41, at 14–15, https://www.regulations.gov/document/USBC-2026-0628-0002; *see also* U.S. Census Bureau, *Why We Ask Questions About Race*, *supra* note 121.

[204] Proposed Residence Criteria and Proposed Regulations, 91 Fed. Reg. at 57,527.

[205] *See supra* Section II.a (discussing states' reliance on these data).

[206] PRIA, *supra* note 41, at 14–15.

[207] *See, e.g.*, *supra* Section II.a.v.; U.S. Const., amend. XV, § 1 (prohibiting federal and state governments from denying a citizen the right to vote "on account of race"); 42 U.S.C. §§ 3604, 2000e-2; 20 U.S.C. § 1681; Cal. Gov. Code § 12940; Minn. Stat. § 363A.08.

[208] *See* Revisions to OMB's Statistical Policy Directive No. 15: Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity, 89 Fed. Reg. 22,182, 22,183 (Mar. 29, 2024); U.S. Dep't of Com., *Statistical Policy Handbook* 37–38 (May 1978), https://perma.cc/D3PR-PURC.

[209] Revisions to OMB's Statistical Policy Directive No. 15, 89 Fed. Reg. at 22,182–83; *see also* Off. of Mgmt. & Budget Interagency Tech. Working Grp. On Race & Ethnicity Standards, *Final Recommendations from the Race and Ethnicity Interagency Working Group*, *supra* note 108.

information—[that] can serve as reliable evidence for certain purposes."[210] But the Bureau never states that it receives information about race, ethnicity, and sexual orientation from these administrative records; it notes only that these records can include unspecified "demographic data."[211] Nor does it describe how such "demographic data"—on unknown topics for unknown populations—could feasibly replace the demographic data historically collected from *all* residents in the decennial census. And, for many of the reasons discussed,[212] the only administrative records the Census Bureau identifies in the Proposed Rule—tax returns—are insufficient to collect information on every census respondent and, more importantly, do not even ask about race, ethnicity, or sexual orientation. Again, the Bureau provides no explanation of how it will address these issues. Nor does it explain why collecting such demographic data from these unspecified "administrative records" would be acceptable, while collecting the same data from the decennial census questionnaire would pose a privacy concern.

c. The Census Bureau Offers No Explanation for Parts of Its Proposed Rule.

The Bureau fails to explain parts of its Proposed Rule concerning the demographic questions. It never explains its proposed language providing that it "shall not disclose or publish any individual demographic data if such disclosure or publication necessitates introducing uncertainty into the population count data, at either the national or the state level."[213] Nor does it explain its proposal to ban certain demographic questions—namely, those on race, ethnicity, and sexual orientation—while explicitly allowing other demographic questions—namely, those about biological sex, date of birth, and household relationships.[214] The Bureau provides that the latter questions can be included "for the sake of facilitating data verification for the enumeration of the population," but it does not explain this reasoning, its plans for data verification, or why these particular demographic questions alone are permissible or useful.[215]

d. The Bureau Fails to Demonstrate Compliance with Federal Law, Regulations, and the Bureau's Standards.

The Bureau has failed to fulfill its responsibilities under the Evidence Act or Trust Regulations. The Bureau, which is one of the federal government's recognized statistical agencies and units ("RSAUs"),[216] is charged with four fundamental responsibilities: (1) to produce and disseminate relevant and timely statistical information; (2) conduct credible and accurate statistical activities; (3) carry out objective statistical activities; and, (4) protect the trust of information providers by ensuring the confidentiality and exclusive statistical use of their responses.[217]

---

[210] *See* Proposed Residence Criteria and Proposed Regulations, 91 Fed. Reg. at 57,527.
[211] *Id.*
[212] *See supra* Section I.b.iv.
[213] *See id*. at 57,530.
[214] *See id*.
[215] *See id*.
[216] 5 C.F.R. Part 1321; Fundamental Responsibilities of Recognized Statistical Agencies and Units, 89 Fed. Reg. 82,453, 82,455 (Oct. 11, 2024); Off. of Mgmt. & Budget, Exec. Off. of the President, M-19-23*, Phase 1 Implementation of the Foundations for Evidence-Based Policymaking Act of 2018: Learning Agendas, Personnel, and Planning Guidance* at 8 n.19 (July 10, 2019).
[217] 44 U.S.C. § 3563(a)(1).

The Trust Regulation further outlines these requirements for RSAUs.[218] With respect to relevant statistical information, the Bureau must "continually seek to understand the diverse interests and needs of policymakers, current and future data users, and the public to ensure statistical products are relevant."[219] Moreover, the Bureau must consult, as appropriate, "with other data users, including Congress, other agencies, and State, local, territorial, or Tribal governments . . . to assess and seek improvements to the relevance of its statistical products to users' needs and to inform what statistical products to produce and disseminate."[220] Maintaining accurate race and ethnicity data is essential to recognizing Native communities and supporting Tribal Nations' self-determination.[221] The Bureau's decision to remove race and ethnicity questions conflicts with its own American Indian and Alaska Native ("AIAN") policy in which it assumes a "responsibility to provide accurate demographic and economic data on AIAN populations."[222]

The Proposed Rule suggests that "[s]ubstantial doubts about the meaning, significance, and impact of attempting to categorize persons by race and ethnicity," have "prompted the Census Bureau to revisit and reconsider the continued need to collect certain demographic data on the short-form decennial questionnaire."[223] As discussed above, the Proposed Rule fails to consider the interests and needs of the States, which rely on decennial demographic data for many important purposes. The Bureau also has not, to date, contacted the signatory States to assess whether demographic data is still relevant to our needs, as required by the Trust Regulation.

Finally, the Bureau also failed to follow, or even acknowledge, its own practices in testing questions.[224] Instead, it has declined to test the effects of removing questions about race and ethnicity from the census questionnaire—a seismic departure from a centuries-old practice—without acknowledging its past practice of field-testing questions.

e. Comprehensive Data on Sexual Orientation Further State Policy, and Barring Collection of Such Data Is an Unexplained Change in Position for the Bureau.

Sexual orientation data further state policy needs. Federal and state agencies have identified needs and uses for sexual orientation data and have asked for questions on the ACS. [225] The lack

---

[218] 5 C.F.R. Part 1321; Fundamental Responsibilities of Recognized Statistical Agencies and Units, 89 Fed. Reg. at 82,457–70.
[219] 5 C.F.R. § 1321.5(b).
[220] *Id*. § 1321.5(b)(ii).
[221] *See generally*, *Reaching Hard-to-Count Communities in the 2020 Census: Hearing Before the H. Comm. on Oversight and Reform*, 116th Cong. (2020) (statement of Kevin J. Allis, CEO, Nat'l Cong. of Am. Indians); *see also 2020 Census Tribal Consultations with Federally Recognized Tribes: Final Report,* U.S. Census Bureau (Winter 2020), https://perma.cc/HFV3-AVHP (discussing need for accurate enumeration and detailed racial data).
[222] U.S. Census Bureau, *American Indian and Alaska Native Policy* 5 (Oct. 21, 2008), https://perma.cc/TMY2-B8E4.
[223] Proposed Residence Criteria and Proposed Regulations*,* 91 Fed. Reg. at 57,527.
[224] *See supra* Section I.b.iv; *see also* Cong. Rsch. Serv., *The Decennial Census of Population and Housing: An Overview*, (Mar. 9, 2026), https://www.congress.gov/crs-product/IF12909.
[225] *See, e.g*., U.S. Census Bureau, OMB Control No. 0607-0936, Supporting Statement A, American Community Survey Methods Panel: 2024 Sexual Orientation and Gender Identity Test at 2, 26 (July 3, 2024), https://tinyurl.com/yzwwknbr; Emily Neumann, Mass. Dep't of Pub. Health, Comment Letter Submitted in Response to U.S. Census Bureau Proposal to Test SOGI Questions for the ACS (May 24, 2024), https://tinyurl.com/yzwwknbr; Meghan Jennigan, Wash. State Dep't of Health, Comment Letter Submitted in Response to U.S. Census Bureau Proposal to Test SOGI Questions in the ACS (May 29, 2024), https://tinyurl.com/yzwwknbr; Letter from Kristen Clarke, Assistant Att'y Gen. for C.R., U.S. Dep't of Just. to Albert E. Fontenot, Jr., Assoc. Dir., Decennial Census

of sexual orientation population data hampers both compliance with relevant civil rights laws and research and policymaking to address the health and well-being of LGBTQ+ people and communities.[226] Collecting data on the census would provide a "gold standard" against which data collections can perform weighting adjustments or assess data quality and nonresponse bias.[227]

The Proposed Rule is a change in position for the Bureau, which had been moving in the direction of collecting more data on sexual orientation. The Bureau successfully sought approval to test questions on sexual orientation for the ACS and began field testing in 2024, and the Bureau collected sexual orientation data in the July 2021 Household Pulse Survey.[228] The Bureau previously stated that questions on sexual orientation "could be added to the census," and that the decision would be the result of a "thoughtful process" to strike the right balance between need and burden.[229] Here the Bureau abandons those conclusions without discussion or justification.

The Bureau refers to the "(potentially) sensitive nature of questions about . . . sexual orientation" but fails to explain how that "sensitive nature" would actually affect the decennial census, or whether it is possible to include questions on sexual orientation while respecting these unspecified sensitivities.[230] Indeed, just two years ago, the Bureau found that questions on sexual orientation were "necessary" and could be "structured . . . to lessen their sensitivity."[231]

The Bureau also fails to assess the lost benefits of excluding sexual orientation questions, including benefits to designing and analyzing "important policy and program issues."[232]

Programs (Dec. 9, 2022), https://tinyurl.com/bpa8sb6d (requesting the Census Bureau consider including a SOGI topic to the ACS and describing how U.S. DOJ would use the data to implement and enforce various federal antidiscrimination laws); Letter From Julian Castro, Sec'y, U.S. Dep't of Hous. & Urban Dev. to John H. Thompson, Dir., U.S. Census Bureau (Jun. 30, 2016), https://tinyurl.com/bpa2j6s6.

[226] *See, e.g.*, Cal. Dep't of Pub. Health, *Best Practices Guidance for Sexual Orientation and Gender Identity Data Collection*, 2 (June 2025); Nat'l Acads. of Sci., Eng'g & Med., *Consensus Study Report: Understanding the Well-Being of LGBTQI+ Populations*, 2, 7, 8, 10-11, 397–402 (Charlotte J. Patterson et al., eds., 2020), https://tinyurl.com/bdctwdya; Lee Badgett & Philip C. Crehan, *Developing Actionable Research Priorities for LGBTI Inclusion*, 7 J. Rsch. Gender Stud. 218, 219, 226, 229, 231 (2017), https://tinyurl.com/mr3r5k58; *see also* U.S. Census Bureau, *Census Bureau Survey Explores Sexual Orientation and Gender Identity* (2021), https://tinyurl.com/2s3rvcsb; U.S. Dep't of Just., Off. of Just. Programs, Bureau of Just. Stats., *Violent Victimization by Sexual Orientation and Gender Identity*, *2017–2020*, at 1–2, 18 (June 2022); U.S. Census Bureau, Supporting Statement A*, supra* note 225, at 8 (numerous comments "expressed the need for the data, especially at low levels of geography"); Nat'l Acads. of Sci., Eng'g & Med., *Measuring Sex, Gender Identity, and Sexual Orientation for the National Institutes of Health* (2022) https://tinyurl.com/7ckf3nmr .

[227] Nat'l Acads. Scis. Eng'r Med., *Measuring Sex, Gender Identity, and Sexual Orientation* 47 (2022), https://tinyurl.com/ydrjw5s9.

[228] Cong. Rsch. Serv., *Proposed Expanded Collection of Statistics on Sexual Orientation and Gender Identity by the Federal Government, IN12342*, at 1 (Apr. 2, 2024), https://tinyurl.com/mw8xefyx; Elsie Carson-Holt, *LGBTQ+ Questions Begin the Test Phase for the Census Bureau's Annual Community Survey*, LGBTQ Nation (Sep. 5, 2024), https://tinyurl.com/2s42k2du.

[229] U.S. Census Bureau, Supporting Statement A*, supra* note 225, at 7–8. The Bureau also ignores its own previous discussion of the SOGI questions "sensitivity" issue in support of the Bureau's decision to test SOGI questions for the ACS survey. *Id*. at 8–9, 10–11.

[230] Proposed Residence Criteria and Proposed Regulations*,* 91 Fed. Reg. at 57,527.

[231] U.S. Census Bureau, Supporting Statement A*, supra* note 225, 8–9, 10–11, 24; *id*. at 11 ("The Census Bureau takes the position that the collection of these types of data is necessary for the analysis of important policy and program issues and has structured the questions to lessen their sensitivity.").

[232] *Id.*

Finally, the Bureau's proposal to categorically rule out even the possibility of adding sexual orientation questions to the census in the future reflects a stark and unexplained departure from the Bureau's own standards for selecting questions for the census.[233]

III. CONCLUSION

If finalized, the Proposed Rule will harm the undersigned States, our residents, and our agencies' abilities to execute critical programming for the benefit of our States and residents. The Proposed Rule's exclusion of non-LPR immigrants from the census count is unlawful and would deny numerous States equal political representation and their fair share of federal funding. The Proposed Rule's departure from the settled meaning of "usual residence," the proposed reliance on tax documents, and the proposed "Census enumeration period" are neither lawful nor reasoned. Moreover, the proposal to remove questions about race and ethnicity and to prohibit asking about sexual orientation on the decennial census would cause significant harms to the States, which rely on those data to improve public health outcomes, identify and address disparities in labor markets, and enforce civil rights protections—and more. The proposal is likewise unreasoned, and the Bureau has not adequately justified such a significant change in policy. We strenuously object to the Proposed Rule and respectfully request its withdrawal.

Sincerely,

Letitia James
Attorney General of New York

Keith Ellison
Attorney General of Minnesota

Jennifer Davenport
Attorney General of New Jersey

Rob Bonta
Attorney General of California

Kris K. Mayes
Attorney General of Arizona

Philip J. Weiser
Attorney General of Colorado

[233] *See supra* Section II.e.



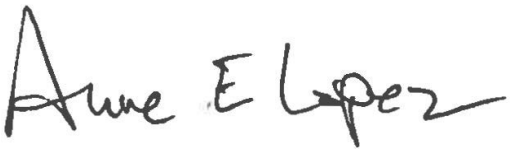
William Tong
Attorney General of Connecticut



Kathleen Jennings
Attorney General of Delaware



Brian L. Schwalb
Attorney General for the District of Columbia



Anne E. Lopez
Attorney General of Hawai‘i



Kwame Raoul
Attorney General of Illinois



Andy Beshear
Governor of the Commonwealth of Kentucky



Aaron M. Frey
Attorney General of Maine



Anthony G. Brown
Attorney General of Maryland



Andrea Joy Campbell
Attorney General of Massachusetts



Dana Nessel
Attorney General of Michigan



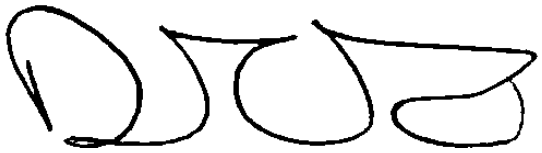
Aaron D. Ford
Attorney General of Nevada



Raúl Torrez
Attorney General of New Mexico



Jeff Jackson
Attorney General of North Carolina



Dan Rayfield
Attorney General of Oregon



Josh Shapiro
Governor of the Commonwealth of Pennsylvania



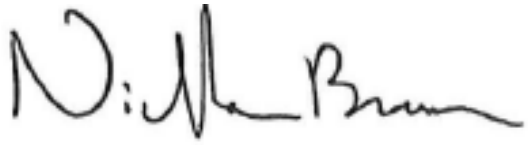
Peter Neronha
Attorney General of Rhode Island



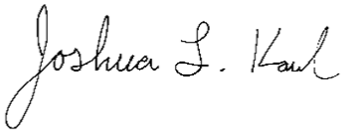
Charity R. Clark
Attorney General of Vermont



Jay Jones
Attorney General of Virginia



Nicholas W. Brown
Attorney General of Washington



Joshua K. Kaul
Attorney General of Wisconsin