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Asian Americans Advancing Justice |
AAJC

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May **X**, 2024

The Honorable Mike Johnson
Speaker of the House
United States House of Representatives
H-232, The Capitol
Washington, D.C. 20515

The Honorable Hakeem Jeffries
Minority Leader
United States House of Representatives
2433 Rayburn House Office Building
Washington, D.C. 20515

Dear Speaker Johnson and Minority Leader Jeffries:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 240 national organizations to promote and protect the rights of all persons in the United States, our Census Task Force co-chairs, Asian Americans Advancing Justice | AAJC and NALEO Educational Fund, and the **XX** undersigned organizations, **we write to urge you to oppose H.R. 7109, the Equal Representation Act, and any future efforts to ask about citizenship status on the decennial census and to exclude noncitizens from the apportionment counts.**

As a threshold matter, H.R. 7109 seeks to achieve a clearly unconstitutional purpose, according to both Republican and Democratic administrations and the Congressional Research Service.¹ The bill would require the U.S. Census Bureau to exclude noncitizens from the congressional apportionment calculation after each census — an action that would clearly violate the plain meaning of the 14th Amendment to the U.S. Constitution to apportion seats based on “the whole number of *persons* in each State” (emphasis added), regardless of citizenship. Denying representation to all “persons” seeks to erase and undo the historic democratic purpose of the 14th Amendment and take us back to the 1860s. The U.S. Supreme Court has recently noted that “representatives serve all residents, not just those eligible to vote,” when considering the 14th Amendment’s requirements in *Evenwel v. Abbott* (578 U.S. ____). 136 S.Ct. 1120 (2016)).

Moreover, the bill essentially seeks to amend the Constitution through legislation, by changing the 14th Amendment apportionment directive from an allocation of seats based on a count of all persons, to one based only on citizens. This effort directly contradicts the established process for amending the Constitution, set forth in Article V.

¹ Lee, Margaret M. Lunder, Erika K. “Constitutionality of Excluding Aliens from the Census for Apportionment and Redistricting Purposes.” *Congressional Research Service*. January 1, 2010. https://digital.library.unt.edu/ark:/67531/metadc627196/m1/1/high_res_d/R41048_2010Jan20.pdf; See also “Apportioning Seats in the U.S. House of Representatives Using the 2013 Estimated Citizen Population.” *Congressional Research Service*. October 30, 2015. <https://crsreports.congress.gov/product/pdf/R/R41636>.

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Equally troubling, if enacted, this section would put the success of future censuses at risk:

1. **H.R. 7109 would undermine 2030 Census accuracy in every state and every community by creating a climate of fear among all immigrants, their families, and their neighborhoods.** Asking about citizenship status in the census is unnecessarily intrusive and will raise concerns among all respondents — both native-born and immigrant, citizens and noncitizens, and mixed-status households alike — about the confidentiality and privacy of information provided to the government. This will have a chilling effect, keep many households from responding, and undermine the accuracy of the count.
2. **The Census Bureau cannot reliably determine the citizenship status of all residents without destroying the chance for an accurate census in all states.** Census Bureau research and testing have shown that response rates would decrease if such a question were added to the census. The result would be that millions of citizens and noncitizens alike, especially people living in mixed-status households, including many children, would be missed. Because census data guide the allocation of \$2.8 trillion annually in federal assistance to states, localities, individuals, and families for a range of vital services, an inaccurate census will skew the fair and prudent distribution of federal resources for the next decade.

In short, H.R. 7109 seeks to accomplish an unconstitutional goal; tries to amend the Constitution through unconstitutional means; and would put the accuracy of the multi-billion dollar, constitutionally required decennial census at grave risk in every state and community. For these reasons, we strongly urge you to oppose H.R. 7109 and any further efforts to ask about citizenship status on the decennial census and to exclude noncitizens from the apportionment counts.

Thank you for considering our views. If you have any questions, please contact Meeta Anand, senior program director of census and data equity at The Leadership Conference on Civil and Human Rights, at anand@civilrights.org.

Sincerely,

The Leadership Conference on Civil and Human Rights
Asian Americans Advancing Justice | AAJC
National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund

cc: Members, Full House