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Asian Americans Advancing Justice |
AAJC

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April 9, 2024

The Honorable James Comer
Chairman
House Committee on Oversight and
Accountability
2410 Rayburn House Office Building
Washington, DC 20515

The Honorable Jamie Raskin
Ranking Member
House Committee on Oversight and
Accountability
2242 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Comer and Ranking Member Raskin:

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 74 undersigned organizations, **we write to urge you to oppose H.R. 7109, the Equal Representation Act, and any future efforts to ask about citizenship or immigration 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 It 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). The 14th Amendment was enacted, in relevant part, to repeal the provision in Article I that counted slaves as only three-fifths of a person for apportionment purposes; H.R. 7109 evokes this shameful legacy by treating noncitizens as less than a person. 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

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>.

April 9, 2024
Page 2 of 4

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.

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.** Asking about citizenship and immigration 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 and immigration 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

ACCESS REPRODUCTIVE JUSTICE

Advancement Project

AHRI Center

American Atheists

American Civil Liberties Union

Arab American Institute

Asian American Legal Defense & Education Fund

April 9, 2024
Page 3 of 4

Asian and Pacific Islander American Vote (APIAVote)
Autistic Self Advocacy Network
Battle Born Progress
Bend the Arc: Jewish Action
Brennan Center for Justice
Building Skills Partnership
Campaign Legal Center
Catalyst of San Diego & Imperial Counties
Center for Law and Social Policy (CLASP)
Chipsa LCV
Coalicion de Lideres Latinos Inc -CLILA-
Coalition on Human Needs
Common Cause
Demos
End Citizens United//Let America Vote Action Fund
Equality California
Fair Count, Inc.
Fair Elections Center
First Focus Campaign for Children
Georgia Redistricting Alliance
Government Information Watch
Houston Immigration Legal Services
Immigration Center for Women and Children
Interfaith Alliance
Japanese American Citizens League (JACL)
Jewish Council for Public Affairs
Labor Council for Latin American Advancement
Latino Community Fund (LCF Georgia)
Lawyers for Good Government
Lawyers' Committee for Civil Rights Under Law
League of Conservation Voters
Migrant Equity Southeast
Movement Advancement Project
National Asian Pacific American Bar Association (NAPABA)
National Association of Social Workers
National Coalition for Literacy
National Community Action Partnership
National Council of Asian Pacific Americans (NCAPA)
National Council of Churches
National Council of Jewish Women
National Disability Rights Network (NDRN)
National Federation of Filipino American Associations
National Organization for Women

April 9, 2024
Page 4 of 4

National Urban League
National Women's Law Center
NETWORK Lobby for Catholic Social Justice
Pennsylvania Partnerships for Children
People For the American Way
PFLAG National
Prison Policy Initiative
Project on Government Oversight
Reproductive Freedom for All (formerly NARAL Pro-Choice America)
Silver State Equality
Southeast Asia Resource Action Center (SEARAC)
Stop AAPI Hate
The Coelho Center for Disability Law, Policy & Innovation
The League of Women Voters of the United States
The Workers Circle
Transformative Justice Coalition
UUFNV
Voto Latino
Washington Anti-Hunger & Nutrition Coalition
We Love Buford Highway, Inc.
Whitman-Walker Institute
William E. Morris Institute for Justice
World Without Genocide
ZERO TO THREE

cc: Members, House Committee on Oversight and Accountability