

117TH CONGRESS
1ST SESSION

S. _____

To create a 2020 Census Federal Advisory Committee on Transparency and Standards.

IN THE SENATE OF THE UNITED STATES

Mr. SCHATZ introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To create a 2020 Census Federal Advisory Committee on Transparency and Standards.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Census Federal Advi-
5 sory Committee on Transparency and Standards Act” or
6 “Census FACTS Act”.

7 **SEC. 2. FINDINGS AND PURPOSES.**

8 (a) FINDINGS.—Congress finds the following:

9 (1) The decennial census is a nonpartisan activ-
10 ity, written into the Constitution of the United

1 States and conducted since 1790, the purpose of
2 which is to allocate political representation based on
3 population.

4 (2) Article I, section 2 of the Constitution of
5 the United States vests Congress with the authority
6 to conduct a decennial enumeration and thereafter
7 determine the apportionment of the Members of the
8 House of Representatives among the States.

9 (3) The placement of that constitutional lan-
10 guage reflects a recognition that apportionment is
11 core to the nature and the exercise of legislative
12 power.

13 (4) Members of the House of Representatives
14 are allocated in proportion to the respective popu-
15 lation of the States, whereas the Members of the
16 Senate are fixed at 2 Senators per State.

17 (5) The apportionment of Members of the
18 House of Representatives among the States fun-
19 damentally shapes the composition of Congress and,
20 particularly, the composition of the House of Rep-
21 resentatives.

22 (6) The House of Representatives therefore has
23 a significant interest in apportionment and, with the
24 Senate, the constitutional prerogative to oversee and
25 command the method of apportionment.

1 (7) Census data also inform decisions about al-
2 locating seats in State legislatures, city councils, and
3 other civic governing bodies.

4 (8) In addition, census data guide the distribu-
5 tion of Federal funds for Medicare and Medicaid,
6 low-income family assistance, highway infrastruc-
7 ture, and many other programs.

8 (9) The Supreme Court of the United States
9 recognized in *Wisconsin v. City of New York*, 517
10 U.S. 1 (1996), that “the Constitution vests Congress
11 with wide discretion over apportionment decisions
12 and the conduct of the census”.

13 (10) The Supreme Court also recognized in *De-*
14 *partment of Commerce v. Montana*, 503 U.S. 442
15 (1992), that, in the context of enumeration and ap-
16 portionment, “Article I, § 8, cl. 18, expressly au-
17 thorizes Congress to enact legislation that ‘shall be
18 necessary and proper’ to carry out its delegated re-
19 sponsibilities.”. The Supreme Court observed that
20 Congress may change its apportionment rules “at
21 any time”.

22 (11) In March 2020, shortly after the beginning
23 of census data collection, the COVID–19 pandemic
24 disrupted the 2020 Census operational plan, leading
25 to delays and requiring more time to conduct and

1 complete census operations. Accordingly, on April
2 13, 2020, the Census Bureau adopted a plan that
3 sought to extend the schedule for data collection and
4 processing and the Secretary of Commerce's reports
5 of population tabulations to the President and the
6 States under subsections (b) and (c) of section 141
7 of title 13, United States Code. The timeline of the
8 Census Bureau dictated that data processing and
9 quality improvement activities would take 6 months.

10 (12) On August 3, 2020, the Director of the
11 Census Bureau changed course and announced a
12 replan that significantly reduced the COVID–19
13 timeframes for in-person data collection and cut
14 data processing timeframes by half. The Census Bu-
15 reau conducted its field operations on a shortened
16 timeline while battling a global pandemic, social un-
17 rest, and severe natural disasters in California, Lou-
18 isiana, and Texas.

19 (b) PURPOSE.—The purpose of this Act is to appoint
20 an expert, nonpartisan Federal advisory committee to
21 evaluate and advise Congress on—

22 (1) the independence and scientific integrity of
23 the Census Bureau and the 2020 Census;

24 (2) the plan of the Census Bureau to deliver
25 the most accurate State-level population figures and

1 data necessary for apportionment, redistricting, and
2 census-guided Federal assistance; and

6 SEC. 3. 2020 CENSUS FEDERAL ADVISORY COMMITTEE ON

7 TRANSPARENCY AND STANDARDS.

8 (a) DEFINITION.—In this section, the term “Advisory
9 Committee” means the 2020 Census Federal Advisory
10 Committee on Transparency and Standards established
11 under subsection (b).

12 (b) ESTABLISHMENT.—There is established the 2020
13 Census Federal Advisory Committee on Transparency and
14 Standards to—

15 (1) review 2020 Census operations and decision
16 making in order to make policy and legislative rec-
17 ommendations, with a focus on—

(B) deviations from the Census Bureau's independent and apolitical mission of enumeration:

(C) disruptions of standard practices and timelines in response to the global coronavirus

1 pandemic, natural disasters, and other unfore-
2 seen events; and

3 (D) the level of transparency, public par-
4 ticipation, and responsiveness on the part of the
5 Census Bureau in making its determinations,
6 including tradeoffs between protecting privacy
7 and confidentiality and assuring the high qual-
8 ity and usability of the data;

9 (2) assess how decisions concerning the 2020
10 Census affected the quality and accuracy of the enu-
11 meration of the people of the United States; and

12 (3) consider factors related to the 2020 Census
13 that may have dampened participation in self-re-
14 sponse.

15 (c) MEMBER QUALIFICATIONS.—The Census Bureau
16 shall enter into an agreement with the Committee on Na-
17 tional Statistics of the National Academies of Sciences,
18 Engineering, and Medicine to identify 20 distinguished
19 scientists, experts, and stakeholders who—

20 (1) have—

21 (A) knowledge about or direct experience
22 with the decennial census, including direct expe-
23 rience with historically undercounted and hard-
24 to-reach communities; or

5 (d) COMPOSITION.—The Advisory Committee shall be
6 composed of 6 members selected from the individuals iden-
7 tified under subsection (c), of whom—

(1) 1 shall be appointed by the majority leader
of the Senate;

10 (2) I shall be appointed by the minority leader
11 of the Senate;

12 (3) I shall be appointed by the Speaker of the
13 House of Representatives;

14 (4) I shall be appointed by the minority leader
15 of the House of Representatives; and

16 (5) 2 shall be appointed by the President.

17 (e) CHAIR.—The President shall designate a member
18 of the Advisory Committee to be the Chair.

19 (f) PERIOD OF APPOINTMENT.—Members of the Ad-
20 visory Committee shall be appointed for the life of the Ad-
21 visory Committee.

22 (g) VACANCY.—A vacancy in the Advisory Committee
23 shall be filled in the manner in which the original appoint-
24 ment was made.

1 (h) APPOINTMENT DEADLINE.—Each member of the
2 Advisory Committee shall be appointed not later than 14
3 days after the date of enactment of this Act.

4 (i) POWERS OF ADVISORY COMMITTEE.—

5 (1) MEETINGS.—

6 (A) INITIAL MEETING.—Not later than 20
7 days after the date of enactment of this Act,
8 the Advisory Committee shall hold its first
9 meeting.

10 (B) QUORUM.—Four members of the Advi-
11 sory Committee shall constitute a quorum.

12 (C) MEETINGS.—

13 (i) IN GENERAL.—The Advisory Com-
14 mittee shall regularly meet at the call of
15 the Chair.

16 (ii) REMOTE MEETINGS.—Meetings of
17 the Advisory Committee may be carried
18 out through the use of telephonic, internet,
19 or other appropriate telecommunication
20 technology if the Advisory Committee de-
21 termines that the technology will allow the
22 members to communicate simultaneously.

23 (D) PUBLIC ACCESS.—

24 (i) IN GENERAL.—Subject to clause
25 (ii), the Advisory Committee shall conduct

1 any deliberations concerning the matters
2 described in subsection (b) in a public
3 meeting.

4 (ii) CLOSED PORTIONS.—The Advisory
5 Committee may close a portion of a
6 meeting only if the Chair determines that
7 the closing is permitted under section
8 552b(c) of title 5, United States Code, and
9 is necessary.

10 (iii) REMOTE ACCESS.—Public access
11 to the meetings of the Advisory Committee
12 may be granted through the use of tele-
13 phonic, internet, or other appropriate tele-
14 communication technology if—

15 (I) the meetings are conducted
16 through such technology; or
17 (II) the Advisory Committee de-
18 termines that such technology is suffi-
19 cient to provide the public with access
20 to meetings.

21 (E) NOTICE.—Before each meeting, the
22 Advisory Committee shall provide timely public
23 notice of the time, place or communication tech-
24 nology, and subject of the meeting.

1 (2) HEARINGS.—The Advisory Committee may
2 hold such hearings, sit and act at such times and
3 places, take such testimony, and receive evidence as
4 the Advisory Committee considers advisable to carry
5 out the responsibilities of the Advisory Committee.

6 (3) INFORMATION FROM FEDERAL AGENCIES.—
7 The Advisory Committee may secure directly from
8 any department or agency of the Federal Govern-
9 ment such information as the Advisory Committee
10 considers necessary to carry out the duties of the
11 Advisory Committee.

12 (4) ADVISORY COMMITTEE RECORDS.—

13 (A) IN GENERAL.—The Advisory Com-
14 mittee shall keep an accurate and complete
15 record of the actions and meetings of the Advi-
16 sory Committee.

17 (B) AVAILABILITY.—The Advisory Com-
18 mittee shall make each record described in sub-
19 paragraph (A) available for public inspection,
20 and the Comptroller General of the United
21 States may audit and examine each such
22 record.

23 (5) PERSONNEL RECORDS.—

24 (A) IN GENERAL.—The Advisory Com-
25 mittee shall keep an accurate and complete

1 record of actions taken with respect to per-
2 sonnel of the Advisory Committee.

3 (B) AVAILABILITY.—The Advisory Com-
4 mittee shall make each record described in sub-
5 paragraph (A) available for public inspection
6 upon request, without disclosing personally
7 identifiable information, and the Comptroller
8 General of the United States may audit and ex-
9 amine each such record.

10 (6) PRIVACY.—The Advisory Committee shall
11 be bound by the same requirements for protection of
12 confidential information as set forth in sections 9
13 and 214 of title 13, United States Code.

14 (7) COMPENSATION OF MEMBERS AND TRAVEL
15 EXPENSES.—A member of the Advisory Committee
16 shall serve without pay but shall receive travel ex-
17 penses to perform the duties of the Advisory Com-
18 mittee, including per diem in lieu of subsistence, at
19 rates authorized under subchapter I of chapter 57 of
20 title 5, United States Code.

21 (8) CONTRACTING.—The Advisory Committee
22 may, to such extent and in such amounts as are pro-
23 vided in appropriation Acts, enter into contracts to
24 enable the Advisory Committee to discharge the du-
25 ties of the Advisory Committee under this section,

1 including contracts to provide administrative support
2 and other support as needed.

3 (9) EXPERT AND CONSULTANT SERVICES.—The
4 Advisory Committee may procure the services of ex-
5 perts and consultants in accordance with section
6 3109 of title 5, United States Code, at rates not to
7 exceed the daily rate paid to a person occupying a
8 position at level IV of the Executive Schedule under
9 section 5315 of title 5, United States Code.

10 (10) POSTAL SERVICES.—The Advisory Com-
11 mittee may use the United States mails in the same
12 manner and under the same conditions as depart-
13 ments and agencies of the United States.

14 (j) REPORTS.—

15 (1) DEFINITION.—In this subsection, the term
16 “appropriate recipients” means—

17 (A) the President;

18 (B) the Secretary of Commerce.

19 (C) the Committee on Homeland Security
20 and Governmental Affairs of the Senate;

21 (D) the Committee on Appropriations of
22 the Senate;

23 (E) the Committee on Oversight and Re-
24 form of the House of Representatives; and

3 (2) INITIAL REPORT.—

10 (B) CONTENTS.—The report submitted
11 under subparagraph (A) shall include the fol-
12 lowing:

1 larly with respect to historically hard-to-
2 count communities.

3 (iii) An analysis of the policies and
4 practices of the Census Bureau's 2020
5 Census operations, and the impact of those
6 policies and practices on achieving a full
7 and accurate count, particularly of histori-
8 cally hard-to-count communities.

9 (3) FINAL REPORT.—

10 (A) IN GENERAL.—Not later than 180
11 days after the date on which the Advisory Com-
12 mittee holds its first meeting, the Advisory
13 Committee shall submit a final report on the
14 findings of the Advisory Committee to the ap-
15 propriate recipients.

16 (B) CONTENTS.—The report submitted
17 under subparagraph (A) shall include rec-
18 ommendations for Census Bureau policy and
19 practice based on the analysis in the initial re-
20 port submitted under paragraph (2).

21 (k) FACA NOT APPLICABLE.—The Federal Advisory
22 Committee Act (5 U.S.C. App.) shall not apply to the Ad-
23 visory Committee.

24 (l) TERMINATION OF ADVISORY COMMITTEE.—The
25 Advisory Committee shall terminate 30 days after the date

1 on which the Advisory Committee submits the final report
2 under subsection (j)(3).

3 (m) AUTHORIZATION OF APPROPRIATIONS.—There is
4 authorized to be appropriated to the Advisory Committee
5 \$750,000 for fiscal year 2021, to remain available until
6 expended.

7 **SEC. 4. POPULATION COUNTS.**

8 Section 22a of the Act entitled “An Act to provide
9 for the fifteenth and subsequent decennial censuses and
10 to provide for apportionment of Representatives in Con-
11 gress”, approved June 18, 1929 (2 U.S.C. 2a(a)), is
12 amended by adding at the end the following:

13 “(d) STATE POPULATION COUNTS.—For the pur-
14 poses of adopting congressional district boundaries, the
15 legislature of a State or any entity that is charged by a
16 State with recommending or adopting such boundaries
17 shall make its recommendations or determinations using
18 total population data counting the whole number of per-
19 sons in the State.”.