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.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Census Federal Advisory Committee on Transparency and Standards Act” or “Census FACTS Act”.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) The decennial census is a nonpartisan activ-
ity, written into the Constitution of the United
States and conducted since 1790, the purpose of which is to allocate political representation based on population.

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

(3) The placement of that constitutional language reflects a recognition that apportionment is core to the nature and the exercise of legislative power.

(4) Members of the House of Representatives are allocated in proportion to the respective population of the States, whereas the Members of the Senate are fixed at 2 Senators per State.

(5) The apportionment of Members of the House of Representatives among the States fundamentally shapes the composition of Congress and, particularly, the composition of the House of Representatives.

(6) The House of Representatives therefore has a significant interest in apportionment and, with the Senate, the constitutional prerogative to oversee and command the method of apportionment.
(7) Census data also inform decisions about allocating seats in State legislatures, city councils, and other civic governing bodies.

(8) In addition, census data guide the distribution of Federal funds for Medicare and Medicaid, low-income family assistance, highway infrastructure, and many other programs.

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

(10) The Supreme Court also recognized in Department of Commerce v. Montana, 503 U.S. 442 (1992), that, in the context of enumeration and apportionment, “Article I, § 8, cl. 18, expressly authorizes Congress to enact legislation that ‘shall be necessary and proper’ to carry out its delegated responsibilities.”. The Supreme Court observed that Congress may change its apportionment rules “at any time”.

(11) In March 2020, shortly after the beginning of census data collection, the COVID–19 pandemic disrupted the 2020 Census operational plan, leading to delays and requiring more time to conduct and
complete census operations. Accordingly, on April 13, 2020, the Census Bureau adopted a plan that sought to extend the schedule for data collection and processing and the Secretary of Commerce’s reports of population tabulations to the President and the States under subsections (b) and (c) of section 141 of title 13, United States Code. The timeline of the Census Bureau dictated that data processing and quality improvement activities would take 6 months.

(12) On August 3, 2020, the Director of the Census Bureau changed course and announced a replan that significantly reduced the COVID–19 timeframes for in-person data collection and cut data processing timeframes by half. The Census Bureau conducted its field operations on a shortened timeline while battling a global pandemic, social unrest, and severe natural disasters in California, Louisiana, and Texas.

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

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

(2) the plan of the Census Bureau to deliver the most accurate State-level population figures and
data necessary for apportionment, redistricting, and
census-guided Federal assistance; and

(3) recommendations to ensure that future de-
cennial censuses are nonpartisan, full, fair, and ac-
curate.

SEC. 3. 2020 CENSUS FEDERAL ADVISORY COMMITTEE ON
TRANSPARENCY AND STANDARDS.

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

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

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

(A) the independence and scientific integ-

rity of the Census Bureau and the data prod-
ucts of the Census Bureau;

(B) deviations from the Census Bureau’s
independent and apolitical mission of enumera-
tion;

(C) disruptions of standard practices and
timelines in response to the global coronavirus
pandemic, natural disasters, and other unforeseen events; and

(D) the level of transparency, public participation, and responsiveness on the part of the Census Bureau in making its determinations, including tradeoffs between protecting privacy and confidentiality and assuring the high quality and usability of the data;

(2) assess how decisions concerning the 2020 Census affected the quality and accuracy of the enumeration of the people of the United States; and

(3) consider factors related to the 2020 Census that may have dampened participation in self-response.

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

(1) have—

(A) knowledge about or direct experience with the decennial census, including direct experience with historically undercounted and hard-to-reach communities; or
(B) knowledge about or direct experience
in the data sciences; and
(2) could potentially serve on the Advisory Committee.

(d) COMPOSITION.—The Advisory Committee shall be composed of 6 members selected from the individuals identified under subsection (e), of whom—

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

(2) 1 shall be appointed by the minority leader of the Senate;

(3) 1 shall be appointed by the Speaker of the House of Representatives;

(4) 1 shall be appointed by the minority leader of the House of Representatives; and

(5) 2 shall be appointed by the President.

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

(f) PERIOD OF APPOINTMENT.—Members of the Advisory Committee shall be appointed for the life of the Advisory Committee.

(g) VACANCY.—A vacancy in the Advisory Committee shall be filled in the manner in which the original appointment was made.
(h) APPOINTMENT DEADLINE.—Each member of the Advisory Committee shall be appointed not later than 14 days after the date of enactment of this Act.

(i) POWERS OF ADVISORY COMMITTEE.—

(1) MEETINGS.—

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

(B) QUORUM.—Four members of the Advisory Committee shall constitute a quorum.

(C) MEETINGS.—

(i) IN GENERAL.—The Advisory Committee shall regularly meet at the call of the Chair.

(ii) REMOTE MEETINGS.—Meetings of the Advisory Committee may be carried out through the use of telephonic, internet, or other appropriate telecommunication technology if the Advisory Committee determines that the technology will allow the members to communicate simultaneously.

(D) PUBLIC ACCESS.—

(i) IN GENERAL.—Subject to clause (ii), the Advisory Committee shall conduct
any deliberations concerning the matters described in subsection (b) in a public meeting.

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

(iii) Remote access.—Public access to the meetings of the Advisory Committee may be granted through the use of telephonic, internet, or other appropriate telecommunication technology if—

(I) the meetings are conducted through such technology; or

(II) the Advisory Committee determines that such technology is sufficient to provide the public with access to meetings.

(E) Notice.—Before each meeting, the Advisory Committee shall provide timely public notice of the time, place or communication technology, and subject of the meeting.
(2) **HEARINGS.**—The Advisory Committee may hold such hearings, sit and act at such times and places, take such testimony, and receive evidence as the Advisory Committee considers advisable to carry out the responsibilities of the Advisory Committee.

(3) **INFORMATION FROM FEDERAL AGENCIES.**—The Advisory Committee may secure directly from any department or agency of the Federal Government such information as the Advisory Committee considers necessary to carry out the duties of the Advisory Committee.

(4) **ADVISORY COMMITTEE RECORDS.**—

(A) **IN GENERAL.**—The Advisory Committee shall keep an accurate and complete record of the actions and meetings of the Advisory Committee.

(B) **AVAILABILITY.**—The Advisory Committee shall make each record described in sub-paragraph (A) available for public inspection, and the Comptroller General of the United States may audit and examine each such record.

(5) **PERSONNEL RECORDS.**—

(A) **IN GENERAL.**—The Advisory Committee shall keep an accurate and complete
record of actions taken with respect to personnel of the Advisory Committee.

(B) AVAILABILITY.—The Advisory Committee shall make each record described in subparagraph (A) available for public inspection upon request, without disclosing personally identifiable information, and the Comptroller General of the United States may audit and examine each such record.

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

(7) COMPENSATION OF MEMBERS AND TRAVEL EXPENSES.—A member of the Advisory Committee shall serve without pay but shall receive travel expenses to perform the duties of the Advisory Committee, including per diem in lieu of subsistence, at rates authorized under subchapter I of chapter 57 of title 5, United States Code.

(8) CONTRACTING.—The Advisory Committee may, to such extent and in such amounts as are provided in appropriation Acts, enter into contracts to enable the Advisory Committee to discharge the duties of the Advisory Committee under this section,
including contracts to provide administrative support and other support as needed.

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

(10) POSTAL SERVICES.—The Advisory Committee may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

(j) REPORTS.—

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

(A) the President;

(B) the Secretary of Commerce.

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

(D) the Committee on Appropriations of the Senate;

(E) the Committee on Oversight and Reform of the House of Representatives; and
(F) the Committee on Appropriations of
the House of Representatives.

(2) INITIAL REPORT.—

(A) IN GENERAL.—Not later than 45 days
after the date on which the Advisory Committee
holds its first meeting, the Advisory Committee
shall submit an initial report on the findings of
the Advisory Committee to the appropriate re-
cipients.

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

(i) An analysis of the changes in Cen-
sus Bureau operations due to the COVID–
19 pandemic and other natural disasters,
and the impact of those changes on the
quality and accuracy of the 2020 Census
data.

(ii) An analysis of the deviations from
the Census Bureau’s independent and apo-
litical mission of accurate enumeration
during the 2020 Census and the impact of
those deviations on the reliability of the
data collected by the 2020 Census, particu-
larly with respect to historically hard-to-count communities.

(iii) An analysis of the policies and practices of the Census Bureau’s 2020 Census operations, and the impact of those policies and practices on achieving a full and accurate count, particularly of historically hard-to-count communities.

(3) Final report.—

(A) In general.—Not later than 180 days after the date on which the Advisory Committee holds its first meeting, the Advisory Committee shall submit a final report on the findings of the Advisory Committee to the appropriate recipients.

(B) Contents.—The report submitted under subparagraph (A) shall include recommendations for Census Bureau policy and practice based on the analysis in the initial report submitted under paragraph (2).

(k) FACA not applicable.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Advisory Committee.

(l) Termination of Advisory Committee.—The Advisory Committee shall terminate 30 days after the date
on which the Advisory Committee submits the final report under subsection (j)(3).

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

SEC. 4. POPULATION COUNTS.

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

“(d) STATE POPULATION COUNTS.—For the purposes of adopting congressional district boundaries, the legislature of a State or any entity that is charged by a State with recommending or adopting such boundaries shall make its recommendations or determinations using total population data counting the whole number of persons in the State.”.