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Citizenship Question Packs Supreme Court for Oral Arguments

By: Tiffany Gourley Carter

On April 23, 2019, in a packed courtroom, the U.S. Supreme Court heard oral arguments on the census citizenship question lawsuit. The line for the public to attend began forming the day before, but I was lucky enough to be the final member of the Supreme Court bar seated in the reserved area of the courtroom, marking the day as one of most exciting I've had since arriving in Washington 2.5 years ago.

The National Council of Nonprofits, joined by the National Human Services Assembly and YWCA, USA, [submitted an amicus brief](#) in the case in opposition of inclusion of the citizenship question.

During the longer-than-usual oral arguments (80+ minutes compared to the normal 60), the justices asked pointed questions to the various counsels about, among other things:

- Fundamental issues relating to the purpose of the census;
- Comparisons, computations, and consequences of statistics relating to census data;
- Technical aspects of the federal Administrative Procedures Act;

- Broad considerations and theories of why certain questions are asked on the census at all;
- Whether those challenging Commerce Secretary Ross's decision to add the question had legal "standing" (whether they had a right to sue based in part on if they had been injured, or injured enough); and
- Basic jurisdictional matters, regarding whether Congress, rather than the courts, should decide this matter if it doesn't like what the Commerce Secretary was doing.

Unsurprisingly, there was a lot of back and forth between the justices and attorneys, but the sheer number of questions and the justices even interrupting each other were surprising.

The unspoken but generally accepted lore among appellate lawyers is that roughly 95 percent of cases in the Supreme Court are won or lost in the written briefs; the 5 percent of cases that are decided based on oral arguments are not won with brilliant arguments but, rather, lost by an attorney who wasn't well prepared. While it appears that the justices are asking questions because they want to help the questioner decide the case, in fact most of the time the justices' questions are designed to have the attorneys say aloud what the questioner wants other justices or the public and media to hear. Thus, reading a transcript to see which justice asked which questions does not reveal as much as being in the courtroom and hearing and seeing directly the verbal and nonverbal communications.

Adding to the uniqueness of this specific oral argument, the Court allowed the U.S. House of Representatives to argue, even though the House did not participate in the lower court proceedings. After the Supreme Court agreed to hear the case, the House filed a motion requesting time to argue, based on the importance of census data for congressional reapportionment. There was brief levity in the courtroom when the attorney for the House opened by thanking the justices on behalf of the Speaker of the House for allowing them to participate in oral arguments. Chief Justice Roberts, smiling, replied, "Tell her, she's welcome."

Following the arguments, news outlets immediately reported that the Court appeared to lean towards allowing the citizenship question, but we won't know until the final decision comes out -- sometime before late June, when the printing of the census questionnaire must begin.

Final fun fact: there are stone carvings of historical leaders of the law throughout the halls, including Moses, King John, Napoleon, and Muhammad, that you can enjoy while waiting in multiple lines for 3 hours.

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Many summaries and analyses have been published over the course of the month, including:

- Kelly Percival and Brianna Cea, [Annotated Guide to the Amicus Briefs in the Supreme Court's Citizenship Question Case](#), Brennan Center for Justice, April 11, 2019.
- Cristian Farias, "[This Could Be One of Trump's Biggest Political Victories](#)," *New York Times*, April 24, 2019.
- Eric Holder, "[The Supreme Court can't allow Trump to weaponize the census](#)," *Washington Post*, April 25, 2019.
- "[Counting America in 2020](#)," *The Economist*, April 27, 2019.
- [SCOTUSblog](#) coverage, *Department of Commerce v. New York*.