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12 UNITED STATES DISTRICT COURT
13
14 NORTHERN DISTRICT OF CALIFORNIA

15 STATE OF CALIFORNIA, *et al.*,
16
17 Plaintiffs,
18
19 v.
20
21 WILBUR L. ROSS, JR., *et al.*,
22
23 Defendants.

Case No. 3:18-CV-01865-RS

**BRIEF OF THE AMERICAN
STATISTICAL ASSOCIATION,
AMERICAN SOCIOLOGICAL
ASSOCIATION, AND POPULATION
ASSOCIATION OF AMERICA AS *AMICI
CURIAE* IN SUPPORT OF PLAINTIFFS**

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Nathaniel Persily, Book Review, *The Right to Be Counted Counting on the
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Robert P. Swierenga, *Historians and the Census: The Historiography of Census
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U.S. Const. amend XIV § 2 4, 9

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1 professionals from multiple disciplines engaged in the scientific study of population. Its common
2 purpose is to advance knowledge and understanding of the causes and consequences of
3 population composition, processes, and change. Founded in 1931, the Population Association of
4 America now has over 3,000 members, who include demographers, sociologists, economists,
5 public-health professionals, and other individuals interested in research and education in the
6 population field.
7

8 *Amici curiae* have a unique interest in ensuring the integrity of the data generated by the
9 2020 census. *Amici* are deeply concerned that an uncertain and untested change to that census
10 will imperil the accuracy, reliability, and utility of a core tool for their research and decision-
11 making. And because *amici* so heavily rely on census data, they are further concerned that the
12 addition of the citizenship question will cause lasting damage to the credibility and professional
13 standing of the Census Bureau, one of the world’s leading statistical agencies.
14

15 SUMMARY OF ARGUMENT

16 The decennial census is “a linchpin of the federal statistical system by collecting data on
17 the characteristics of individuals, households, and housing units throughout the country.” *Dep’t*
18 *of Commerce v. U.S. House of Representatives*, 525 U.S. 316, 341 (1999). Charged with
19 safeguarding the integrity of this critical data, the United States Census Bureau (the “Bureau”)
20 has historically set the world standard for a statistical agency, employing scientifically rigorous
21 methods to generate trustworthy information. Like so many others, *amici* place their faith in this
22 data source every day. Accurate and reliable census information features in an astonishing array
23 of decisions, from where voters cast their ballots, to where small businesses choose to invest, to
24 how the federal government allocates money, to how emergency responders prepare for natural
25 disasters, among many others. And the Supreme Court has emphasized that our Nation has a
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1 “strong constitutional interest” in census-data accuracy. *Utah v. Evans*, 536 U.S. 452, 478
2 (2002).

3 But the U.S. Department of Commerce (the “Department”) has made an arbitrary-and-
4 capricious, last-minute decision to add a citizenship question to the 2020 census that will
5 significantly jeopardize the integrity of the data that the census produces. The Bureau has
6 established procedures designed to generate accurate data when the census includes a new
7 question, and these procedures are consistent with standard statistical practices. For example, the
8 Bureau ordinarily conducts extensive field testing—often for many years—before adding a
9 question to the decennial census. During this field-testing process, the Bureau ordinarily gives
10 careful consideration to how an additional question might affect response rates and data accuracy.
11 And the Bureau ordinarily proceeds with particular caution when considering a question that
12 threatens to cause fear and lack of participation among vulnerable populations.
13
14

15 However, the Commerce Department has forced the Bureau to abandon these basic
16 principles in this case. Notwithstanding the cogent analysis of the Bureau’s Chief Scientist, John
17 Abowd, the Department now rushes to insert a citizenship question into the census, for the first
18 time in seven decades, without any type of meaningful field testing. The Department mandated
19 the addition of the citizenship question in March 2018—months after the Bureau’s internal
20 deadline for proposing new census questions had passed and years after the Bureau had begun
21 preparing for the 2020 census without having ever included such a question.
22

23 According to Commerce Secretary Wilbur Ross, the Department allegedly believes that
24 adding a citizenship question will “prioritize[] the goal of obtaining complete and accurate data.”
25 It will not. Instead, contravening one established statistical principle after another in this fashion
26 will throw into doubt that data’s integrity and utility. The overwhelmingly sensitive nature of the
27 citizenship question will substantially reduce census participation rates while generating a higher
28

1 percentage of incomplete or inaccurate responses. The Secretary asserts that there is no evidence
 2 that the citizenship question will cause lower participation rates, but that assertion improperly
 3 stands the appropriate statistical standard on its head, is inconsistent with the Bureau's
 4 longstanding practice of deliberative caution in adding questions to the census, and is deeply at
 5 odds with basic professional statistical norms.

6
 7 The citizenship question imperils the Bureau's enduring role as a leading statistical
 8 agency, and it threatens the integrity of census data, which influences everything from the
 9 operation of our economy to the fairness of our democracy. The last-minute addition of the
 10 citizenship question ignores established statistical methods. And it will have significant negative
 11 consequences for professional and academic researchers, like *amici's* members, who count on
 12 accurate census data to help us better understand our world.

13 ARGUMENT

14 I. The Department's Last-Minute Addition Of A Citizenship Question Unnecessarily 15 Threatens The Integrity Of Census Data.

16 A. The Bureau Abandoned Its Longstanding Practice Of Following Proper 17 Statistical Procedures, Which Preclude Adding Questions To The Census 18 Without Thorough Planning And Field Testing.

19 The Bureau has a constitutional duty to conduct an accurate census. U.S. Const. art. I,
 20 § 2, cl. 3; *id.* amend. XIV § 2; *Evans*, 536 U.S. at 478 (“strong constitutional interest in accuracy”
 21 of the census); *Wisconsin v. City of N.Y.*, 517 U.S. 1, 19–20 (1996) (the Secretary may violate the
 22 Constitution if he unreasonably compromises “the distributive accuracy” of the census). The
 23 Bureau also has a statutory duty to conduct an accurate census. *See* 13 U.S.C. § 141 (note) (“[I]t
 24 is essential that the decennial enumeration of the population be as accurate as possible, consistent
 25 with the Constitution and laws of the United States.”). And the Census Bureau's own binding
 26 regulations likewise create a federal regulatory duty to conduct an accurate census. 15 C.F.R.
 27 § 90.2 (“It is the policy of the Census Bureau to provide the most accurate population estimates
 28

1 possible.”). In addition, the Information Quality Act requires that federal agencies—including the
2 Census Bureau—issue guidelines for “maximizing the quality, objectivity, utility, and integrity of
3 information (including statistical information).” Consolidated Appropriations Act of 2001, Pub.
4 L. No. 106-554, § 515(b), 114 Stat. 2763 (codified at 44 U.S.C. § 3516 (note)). The agencies
5 must, for example, “design the survey to achieve the highest practical rates of response,
6 commensurate with the importance of survey uses, respondent burden, and data collection costs,
7 to ensure that survey results are representative of the target population so that they can be used
8 with confidence to inform decisions.” See Office of Mgmt. and Budget, *Standards and*
9 *Guidelines for Statistical Surveys* 1 (Sept. 2006)²; 71 Fed. Reg. 55522-01 (Sept. 22, 2006).

11 The Bureau has developed and issued statistical quality standards in line with the
12 Information Quality Act and in keeping with its constitutional, statutory and regulatory duties to
13 ensure census-data accuracy. These quality standards “apply to all information products released
14 by the Bureau and the activities that generate those products,” including the decennial census.
15 U.S. Census Bureau, *Statistical Quality Standards* ii (July 2013).³ Under the Bureau’s quality
16 standards, “pretesting *must* be performed” to avoid questionnaire content that could cause
17 “confusion,” “misinterpretation” and “a loss of information.” *Id.* at 12 (emphasis added). This
18 pretesting is required, for example, when “review by cognitive experts reveals that adding
19 pretested questions to an existing instrument may cause potential context effects,” or where “an
20 existing data collection instrument has substantive modifications (*e.g.*, existing questions are
21 revised or new questions added).” *Id.* at 8. The pretesting process must verify that questions “are
22 not unduly sensitive and do not cause undue burden.” *Id.*

25 These guidelines are consistent with proper statistical practices. A leading treatise
26 emphasizes the importance of careful analysis and pretesting before changing data-collection
27

28 ² Available at <https://bit.ly/2Jhq199>.

³ Available at <https://bit.ly/2D7L2zB>.

1 techniques. For example, there are several widely accepted methodologies for evaluating such
 2 changes:

3 Research on methods to improve data quality may cover such areas as alternative
 4 methods for imputing values for missing data, alternative question wordings to
 5 reduce respondent reporting errors (based on cognitive methods), and alternative
 6 sources of data and ways for combining them to enhance quality. Methods for
 7 such research may include the use of “methods panels” (small samples for which
 8 experiments are conducted by using alternative procedures and questionnaires),
 9 matching with administrative records, and simulations of sensitivity to alternative
 10 procedures.

11 Nat’l Academies of Science, Eng’g & Medicine, *Principles & Practices for a Federal Statistical*
 12 *Agency* 114 (6th ed. 2017) (“*Principles & Practices*”). “In ongoing programs for which it is
 13 disruptive to implement improvements on a continuing basis, a common practice is to undertake
 14 major research and development activities at intervals of 5, 10, or more years.” *Id.* (emphasis
 15 added). Indeed, “[h]igh-quality surveys *always* provide adequate budget and time for pre-testing
 16 questionnaire(s) and field procedures,” because “[a] pre-test of the questionnaire and field
 17 procedures is the only way of finding out if everything ‘works’ especially if a survey employs
 18 new techniques or a new set of questions.” Am. Assoc. for Pub. Op. Research, “Best Practices
 19 for Survey Research” (emphasis added).⁴

20 As the Bureau has explained, since 1970 it has “conducted content tests to research and
 21 improve the design and function of different questions.” U.S. Census Bureau, *Content Research*
 22 (Jan. 11, 2017).⁵ These tests seek “to ensure [that] census questionnaires are easily understood
 23 and reflect the population accurately.” *Id.* Consider, for example, that the Bureau has been
 24 pretesting changes to questions about Hispanic origin and race for inclusion in the 2020 census
 25 *since 2010. Id.* And the Bureau has conducted annual “research and testing” phases *since 2013*
 26 to evaluate “fundamental changes to the design, implementation, and management of the
 27

28 ⁴ Available at <https://bit.ly/2QbKzTW>.

⁵ Available at <https://bit.ly/2DBFYJn>.

1 decennial Census.” U.S. Census Bureau, *2020 Census: Census Testing By Year*.⁶ The Bureau
2 has explained that it has engaged in this careful, methodical process to “maintain[] a disciplined
3 and transparent acquisition decision process” and to “obtain evidence-based decisions.” *Id.*

4
5 By March 2018, the Bureau had already launched its *last* field test for the 2020 census, in
6 Providence, Rhode Island, again without including a citizenship question. *Id.* Yet the
7 Department announced its intent to add a citizenship question to the 2020 census—for the first
8 time in seven decades—on *March 26, 2018*, long after any changes to its testing could be made.
9 The Department’s eleventh-hour mandate to add the citizenship question, overriding the
10 objections of the professionals at the Census Bureau, has left the Bureau with no choice but to
11 forgo its standard procedures and to operate completely outside the bounds of standard practice
12 and appropriate methodology. It is simply too late to conduct adequate pretesting of such a major
13 reconfiguration of the census, as the Bureau’s internal guidelines and statistical principles require.
14 *Amici* are unaware of any previous example of such a potentially enormous and uncertain change
15 to the census being made with such haste and lack of preparation. Unsurprisingly, the
16 Department’s insistence on moving forward with the citizenship question notwithstanding this
17 violation of the Bureau’s ordinary procedures drew a sharp response from its Chief Scientist, who
18 concluded that adding a citizenship question “is very costly, harms the quality of the census
19 count, and would use substantially less accurate citizenship status data than are available from
20 other administrative sources.” Mem. from J. Abowd to W. Ross (Jan. 19, 2018) (“Abowd
21 Mem.”), at 1.⁷

22
23
24 The Secretary nonetheless argues that there is no evidence that implementing a last-
25 minute change to the 2020 census will result in unreliable data. As discussed in more detail
26 below, this is not true; evidence shows that adding a citizenship question will significantly affect
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28 ⁶ Available at <https://bit.ly/2QZlEnI>.

⁷ Available at <https://bit.ly/2tzRYUi>.

1 both data accuracy and response rates. But even crediting the Secretary’s dubious claim, the
2 Secretary’s position flips the statistical “burden of proof” on its head, and is inconsistent with
3 sound statistical practice. *See* Nat’l Academies of Sciences, Eng’g & Medicine, *Letter Report on*
4 *the 2020 Census* 6 (Aug. 7, 2018).⁸ Field testing potential survey questions is the *norm* for proper
5 statistical inquiries, as the Bureau’s own guidelines and professional statistical standards show; it
6 is not some nicety that can be dispatched when inconvenient. *See* U.S. Census Bureau, *Statistical*
7 *Quality Standards* at 8, 12; Am. Assoc. for Pub. Op. Research, “Best Practices for Survey
8 Research,” *supra*. The statistically valid approach requires great caution before adding a
9 question, so that the Bureau—and all those who rely on the Bureau’s historically excellent
10 work—can proceed with confidence that the additional question will not skew or otherwise affect
11 the validity of the data.
12

13
14 In short, the Bureau has not conducted the type of careful pretesting that its own standards
15 and professionally recognized statistical practices require. While it has spent nearly a decade
16 testing other potential census questions, the Bureau has spent not one moment testing the
17 citizenship question. And there is a significant risk that the addition of this untested question will
18 strike fear into members of discrete populations, reducing census response rates in asymmetric
19 fashion, and thus generating incomplete and inaccurate data.
20

21 **B. The Citizenship Question Will Reduce Response Rates while Generating**
22 **Incomplete and Inaccurate Answers.**

23 The Bureau’s addition of a citizenship question will undermine, rather than promote, the
24 accuracy of census data. Statisticians recognize that even seemingly innocuous additional survey
25 questions can increase “respondent burden,” that is, “[t]he degree to which a survey respondent
26 perceives participation in a survey research project as difficult, time consuming, or emotionally
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28 ⁸ Available at <https://bit.ly/2AQivTr>.

1 stressful.” Encyclopedia of Survey Research Methods.⁹ “The researcher must consider the
2 effects of respondent burden prior to administering a survey instrument, as too great an average
3 burden will yield lower-quality data and is thereby counterproductive.” *Id.*; accord Scott Fricker,
4 U.S. Dept. of Labor Statistics, *Defining, Measuring, and Mitigating Respondent Burden* (Mar. 8,
5 2016). Adding any question to a survey increases respondent burdens and therefore risks
6 reducing participation rates. Dillman *et al.*, *Effects of Questionnaire Length, Respondent-*
7 *Friendly Design, and a Difficult Question on Response Rates for Occupant-Addressed Census*
8 *Mail Surveys*, 57 *Public Opinion Quarterly* 289 (1993) (“An experimental study of alternatives to
9 the current US decennial census questionnaire demonstrated that shortening the questionnaire and
10 respondent-friendly questionnaire design improve response, whereas asking a potentially difficult
11 and/or objectionable question (i.e., social security number) lowers response.”).

14 But adding a question on citizenship—one so fraught with emotional, psychological, and
15 legal ramifications—will almost certainly increase respondent burdens by orders of magnitude,
16 cause significant declines in the response rate and lead to a substantial undercount of immigrant
17 populations, despite the Bureau’s constitutional obligation to count *all* persons in the United
18 States, citizen or otherwise. U.S. Const. art. I, § 2, cl. 3; *id.* amend XIV § 2. As the Bureau’s
19 Chief Scientist and Associate Director for Research and Methodology, John Abowd, has noted,
20 “item nonresponse rates for the citizenship question [asked as part of the American Community
21 Survey] are much greater than the comparable rates for other demographic variables like sex,
22 birthdate/age, and race/ethnicity.” Abowd Mem. at 4. The reason is obvious: questions about
23 citizenship status are overwhelmingly sensitive. In this light, the Secretary’s unsupported
24 assertion that “limited empirical evidence exists of whether a citizenship question would decrease
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⁹ Available at <https://bit.ly/2Imzih1>.

1 response rates materially,” Mem. from W. Ross to K. Kelley (Mar. 26, 2018) at 5,¹⁰ is directly
2 contradicted by the data and conclusion cited by the Bureau’s Chief Scientist. Moreover,
3 anecdotal evidence contradicting the Secretary’s assertion is legion. *See, e.g.,* Hansi Lo Wang &
4 Marisa Penaloza, *Many Noncitizens Plan To Avoid the 2020 Census, Test Run Indicates*, NPR
5 (May 11, 2018).¹¹

6
7 Indeed, the Census Bureau itself has explained the reality best, in terms that directly
8 contradict the Secretary’s position. As the Bureau argued in *Federation for American*
9 *Immigration Reform v. Klutznick*, 486 F. Supp. 564 (D.D.C. 1980): “Obtaining the cooperation
10 of a suspicious and fearful population would be impossible if the group being counted perceived
11 any possibility of the information being used against them. Questions as to citizenship are
12 particularly sensitive in minority communities and would inevitably trigger hostility, resentment
13 and refusal to cooperate.” *Id.* at 568 (recounting the Bureau’s litigation position in that case).
14 The suspicions and fears that the Bureau referred to in 1980 are no doubt even more acute today,
15 at a time when anti-immigrant sentiments run high and immigration-enforcement raids create an
16 enormous fear of deportation among immigrant communities. *See* Associated Press, “Hunger,
17 Fear, Desperation: What Came of an Ordinary ICE Raid,” (July 9, 2018).¹² And because
18 questions surrounding citizenship status are “known or anticipated to have tangible physical,
19 financial, or psychological effects,” ethical guidelines caution that statisticians use extra care
20 when engaging in those analyses. Am. Statistical Ass’n, *Ethical Guidelines for Statistical*
21 *Practice H-3*. Here, the Secretary’s complete lack of care in choosing to add a citizenship
22 question to the census will inevitably lower response rates.
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27 ¹⁰ Available at <https://bit.ly/2yHcMuK>.

28 ¹¹ Available at <https://n.pr/2wSkLHF>.

¹² Available at <https://cbsn.ws/2zUs8Oo>.

1 Lower response rates, in turn, will jeopardize data accuracy. After examining “several
2 Census Bureau surveys with and without citizenship questions,” the Bureau has concluded that
3 “households that may contain noncitizens are more sensitive to the inclusion of citizenship in the
4 questionnaire than all-citizen households,” and that “adding a citizenship question to the 2020
5 Census would lead to lower self-response rates in households potentially containing noncitizens,
6 resulting in more nonresponse follow-up . . . fieldwork, more proxy responses, and a lower-
7 quality population count.” J. David Brown et al., *Understanding the Quality of Alternative
8 Citizenship Data Sources for the 2020 Census* 54 (Aug. 2018).¹³

9
10 And to top it all off, including the citizenship question in the decennial census is entirely
11 unnecessary. The American Community Survey *already* measures the citizenship voting-age
12 population and provides both the Justice Department and researchers like *amici* with sufficiently
13 detailed data to study noncitizen populations, particularly when paired with other data sources, for
14 example, records from federal administrative agencies such as the Social Security Administration.
15 The justification for the last-minute addition of a citizenship question is therefore especially
16 dubious because, in addition to causing a number of serious negative effects, the added question
17 will not have any offsetting benefits, as it will largely duplicate data that is already available for
18 the same purpose.
19

20
21 Instead of engaging in the careful testing and evaluation required by the Bureau’s
22 guidelines, the Secretary insists on injecting a controversial, untested question shortly before the
23 2020 census. There is no principled basis in professional statistical practice for this approach.

24 **II. The Accuracy And Reliability Of Census Data Are Of Vital Public Importance, And**
25 **Are Seriously Threatened By Inclusion Of The Citizenship Question.**

26 The departure mandated by the Commerce Secretary from the Census Bureau’s historical
27 and professionally responsible practices will have enormous and adverse practical consequences.

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¹³ Available at <https://bit.ly/2xIIDfR>.

1 As the Supreme Court recognized in *U.S. House of Representatives*, although the decennial
2 census was “originally established for the sole purpose of apportioning Representatives,” it has
3 “grown considerably over the past 200 years.” 525 U.S. at 341. The data produced by the
4 decennial census now is absolutely vital to our Nation’s growth and development, and provides
5 the basic foundation for countless decisions made on a daily basis by the federal government,
6 local governments, and private business. *Amici* are deeply troubled by any action taken to alter
7 the census without proper testing and calibration that threatens the accuracy and reliability of this
8 vital data resource. Whether intended or not, the consequences are potentially enormous. *See*
9 Haley Sweetland Edwards, *Why the Census Matters Now More than Ever*, Time (May 18,
10 2017).¹⁴

11
12 The census’s direct effects on American life are obvious. The census establishes the
13 baseline for how seats in the House of Representatives are apportioned among the States and how
14 electors to the Electoral College are allocated. *See generally* Nathaniel Persily, Book Review,
15 *The Right to Be Counted Counting on the Census?*, 53 Stan. L. Rev. 1077, 1087–90 (2001). But
16 the census’s significance goes far beyond the political. The census determines where almost \$700
17 billion in federal funding is directed, through numerous national, state, and local programs each
18 year. *See Decennial Census of Population and Housing: Why We Conduct the Decennial*
19 *Census*, United States Census Bureau (Oct. 19, 2017).¹⁵ These programs include, among many
20 others, the Highway Trust Fund and Urbanized Area Formula Funding programs, the Head Start
21 program, Medicare, the Supplemental Nutrition Assistance Program, and Title I funding for low-
22 income schoolchildren. *See* Jim Tankersley & Emily Baumgaertner, *Here’s Why an Accurate*
23 *Census Count Is So Important*, N.Y. Times, Mar. 28, 2018, at A16.¹⁶ Long-term programs

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27 ¹⁴ Available at <https://ti.me/2qzlt7n>.

28 ¹⁵ Available at <https://bit.ly/2hvVrwz>.

¹⁶ Available at <https://nyti.ms/2GI0tFk>.

1 dependent on population changes over time, including Social Security, likewise rely heavily on
2 census data. *See generally* Office of the Chief Actuary, Social Security Administration, The
3 Long-range Demographic Assumptions for the 2018 Trustees Report (June 5, 2018).¹⁷ It is not
4 hard to understand, given these consequences, why the manner in which the census is conducted
5 is so important.
6

7 The census’s indirect effects are of similarly great importance to the national interest.
8 Private businesses, nonprofit organizations, and government actors have all come to depend on
9 the unique reliability and utility of census data when making all manner of economic, business,
10 and strategic planning decisions. It is widely acknowledged that “federal statistical agencies” like
11 the Census Bureau “have refined a set of practices that ensure the quality and impartiality” of
12 their data that make the data a uniquely valuable public resource. *See Principles & Practices,*
13 *supra*, at 1; *see also* Nicholas Eberstadt, Ryan Nunn, Diane Whitmore Schanzenbach & Michael
14 R. Strain, The Hamilton Project, “In Order That They Might Rest Their Arguments on Facts”:
15 The Vital Role of Government-Collected Data 1–4 (Mar. 2017) (“Because the reports are of such
16 value to the private sector and the public at large, financial markets carefully scrutinize them,
17 reacting quickly to many of the releases.”).¹⁸ The Census Bureau itself recognizes as much. On
18 its own website, the agency rightly touts the Census Bureau Economic Programs, explaining how
19 the detailed statistical information that the Bureau makes publically available have wide-ranging
20 practical benefits. For example, the agency highlights how a new small business was able to use
21 census data to identify a potentially viable location to manufacture and sell mountain-bike
22 components in Portland, Oregon; how census data successfully enabled an Albuquerque, New
23 Mexico entrepreneur to expand his restaurant business and secure a small-business loan; and how
24 emergency-management officials in South Florida use census data to better prepare for the
25
26
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28 ¹⁷ Available at <https://bit.ly/2xUUeXk>.

¹⁸ Available at <https://bit.ly/2xSCDzv>.

1 aftermath of severe weather. *Economic Census: Uses of Data*, United States Census Bureau
 2 (Apr. 3, 2018).¹⁹

3 Public access to that data is particularly crucial to the States and local governments that
 4 receive over \$400 billion a year in federal funds dependent on demographic, socioeconomic, and
 5 geographic factors. The State and local governments often partner on key support programs with
 6 institutions that rely on census data because they lack the means to generate such data
 7 independently. See generally Kate Cheyne, *Why The US Census is Important to Food Banks—*
 8 *and Why We Need To Protect It*, Alameda County Community Food Bank (Jan. 31, 2018) (“For
 9 non-profits, policy makers, and advocates working to end food insecurity and hunger, [Census
 10 Bureau data is] our most comprehensive source of information on poverty rates, household
 11 incomes, cost of living, health insurance, nutrition assistance participation, and more.”).²⁰

12 Academic researchers also rely heavily on census data to better understand and evaluate
 13 numerous aspects of the world around us. Statisticians, demographers, economists,
 14 epidemiologists, and political scientists, among countless other social-science professionals, have
 15 long used census data as a key tool for generating knowledge. Robert P. Swierenga, *Historians*
 16 *and the Census: The Historiography of Census Research*, 50 *The Annals of Iowa* 650 (1990).
 17 Use of census data has generated a wide range of statistical innovations. Recent advances in
 18 statistical analysis, computing, and data analytics have only bolstered that crucial utility. Leading
 19 research institutions around the world recognize the vital uses of census data. The University of
 20 Minnesota,²¹ Amherst College,²² the Dartmouth College Library,²³ and New York University,²⁴
 21 for example, all make available special training materials and aggregate various sources of census
 22 data.

23 ¹⁹ Available at <https://bit.ly/2R3aj5Y>.

24 ²⁰ Available at <https://bit.ly/2xFphHi>.

25 ²¹ Available at <https://bit.ly/2QZf7IQ>.

26 ²² Available at <https://bit.ly/2IILkas>.

27 ²³ Available at <https://bit.ly/2Dz6Tpc>.

28 ²⁴ Available at <https://bit.ly/2xGMaKG>.

1 data to use in research across a wide range of disciplines. So does the Census Bureau itself.
2 Recognizing the range of uses to which census data may be put, the Bureau has recently offered a
3 series of informational videos and provides a channel of communication with agency experts for
4 teachers, students, researchers and the public generally. *See Census Academy: Free courses on*
5 *how to use Census data*, United States Census Bureau (last visited Feb. 1, 2019).²⁵ The
6 knowledge and exploration enabled by census data informs untold aspects of policymaking, both
7 directly and indirectly, and carries crucial real-world consequences as a result. Though these
8 downstream effects may be difficult to quantify, they too are worthy of significant consideration.

9
10 Each of these critical uses of census data would be severely undermined if the data's
11 integrity were to falter. The potential consequences are enormous. In addition to political
12 malapportionment and potentially billions of dollars in misdirected government funding, the
13 private sector and the academy—and all of us who rely on these institutions—would be forced to
14 make decisions in the face of uncertain or known-to-be-incorrect baseline assumptions.

15
16 Finally, informed decisionmaking requires accurate information. But more information
17 (produced by adding an additional question) is *not* the same thing as better information. On the
18 contrary, if the method used to generate that additional information taints the validity of the
19 collection process, the value of future census data will be worsened overall. There is no
20 evidence-based reason to believe that the Department of Commerce can add a citizenship
21 question to the 2020 census without compromising the accuracy and reliability of the overall data.
22 At the very least, the inherent uncertainty of moving forward with that question would undermine
23 the widespread trust that has long been the hallmark of Census Bureau data. Any marginal
24 benefit from the answers to the citizenship question would be far outweighed by the asymmetric
25 effects on political representation, funding decisions, and academic and policy research.
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²⁵ Available at <https://bit.ly/2N3PUKY>.

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CONCLUSION

For the foregoing reasons, Plaintiffs’ challenge to the Census Bureau’s inclusion of a question on citizenship in the 2020 census should be sustained.

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