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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

NATIONAL URBAN LEAGUE; LEAGUE  
OF WOMEN VOTERS; BLACK  
ALLIANCE FOR JUST IMMIGRATION;  
HARRIS COUNTY, TEXAS; KING  
COUNTY, WASHINGTON; CITY OF LOS  
ANGELES, CALIFORNIA; CITY OF  
SALINAS, CALIFORNIA; CITY OF SAN  
JOSE, CALIFORNIA; RODNEY ELLIS;  
and ADRIAN GARCIA,

Plaintiffs,

v.

WILBUR L. ROSS, JR., in his official  
capacity as Secretary of Commerce; U.S.  
DEPARTMENT OF COMMERCE;  
STEVEN DILLINGHAM, in his official  
capacity as Director of the U.S. Census  
Bureau; U.S. CENSUS BUREAU,

Defendants.

Case No. 5:20-cv-05799-LHK

**BRIEF OF AMICI CURIAE 12 BUSINESSES  
AND BUSINESS ORGANIZATIONS IN  
SUPPORT OF PLAINTIFFS**

Date: September 17, 2020

Time: 1:30 p.m.

Place Courtroom 8, 4th Floor, San Jose

Judge: Honorable Lucy H. Koh

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## I. INTERESTS OF *AMICI CURIAE*

*Amici* submit this brief to provide important context regarding how *amici* and others in the business community rely on Census data, and how inaccurate Census data harms businesses and consumers.

*Amici* include the following companies and business organizations from a variety of sectors:

- Cummins Inc.
- General Assembly Space, Inc.
- Knotel, Inc.
- Levi Strauss & Co.
- LivHOME, Inc.
- Lush Cosmetics LLC
- Mara Hoffman Inc.
- Minneapolis Regional Chamber of Commerce
- Postmates Inc.
- Univision Communications Inc.
- Workplace Options, LLC
- Zendesk Inc.

*Amici's* interests in this case are strong. *First, amici*, like many businesses, rely on Census data to make a variety of decisions, including where to put new brick-and-mortar locations, how to market their products, and how to predict which products will be successful in a given market. Businesses also have a broader interest in ensuring that the communities they serve receive needed federal support—in terms of education, infrastructure, and other support—in order to provide an environment ripe for new development and innovation. All of these things depend on the availability of accurate Census data, and an inadequate or compressed plan for collecting, verifying, and analyzing Census information threatens to compromise the accuracy of that data.

*Second, amici* have a broader interest in protecting their employees, customers, and business partners from the negative effects of an inaccurate Census count. Immigrant and minority communities are most vulnerable to inaccuracies in Census data, and are therefore most at risk of losing access to

1 federal funding or even of losing congressional representation. An inaccurate Census count will harm  
2 businesses and the communities in which they serve.

3 For the above reasons, *amici* have a substantial interest in this litigation.<sup>1</sup>

## 4 II. INTRODUCTION

5 Accurate Census data is important to businesses. Companies use that data to plan new locations  
6 and future projects, and they and their communities rely on federal funding allocated based on Census  
7 data. While businesses have a number of resources at their disposal to help them understand the  
8 characteristics, preferences, and geographic distribution of their customers, the Census is a particularly  
9 important business tool. *See* Paul Farhi, *For Business, Census Is a Marketing Data Motherlode*, Wash.  
10 Post (Mar. 17, 1990), <https://wapo.st/2JOPI67>. The Census provides critical data that informs decision-  
11 making in both the private and public sectors. Businesses regularly use that data to determine where  
12 to locate stores and facilities, find qualified workers, and market products and services. *See generally*  
13 *Ready Nation, Data for a Strong Economy*, <https://bit.ly/2PJ17a2>. Consequently, government action  
14 that threatens the accuracy of Census data directly harms the businesses nationwide that rely on that  
15 data.

16 Defendants have multiple times attempted to revise Census policy and procedure in ways that  
17 could impair the reliability and accuracy of Census data. In 2018, the Department of Commerce  
18 announced its intent to add a question to the Census asking about citizenship, despite longstanding  
19 recommendations by the Census Bureau itself that such a question would reduce response rates and  
20 impair Census data. *New York v. U.S. Dep't of Commerce*, 351 F. Supp. 3d 502, 530 (S.D.N.Y.), *aff'd*  
21 *in part* 139 S. Ct. 2251 (2019). Last year the Supreme Court held that that effort was based on a  
22 “contrived” and pretextual rationale. *Dep't of Commerce v. New York*, 139 S. Ct. 2551, 2575 (2019).

23 This year, on July 21, 2020, President Trump issued a memorandum declaring that it is the  
24 policy of the United States to exclude undocumented immigrants from the apportionment base—the  
25 number of individuals used to determine allocation of congressional seats and electoral votes—despite  
26

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27  
28 <sup>1</sup> No party’s counsel authored the brief in whole or in part; and no party, party’s counsel, or  
person other than the *amici curiae*, their members, or their counsel contributed money that was  
intended to fund preparing or submitting the brief.



1 decades if not centuries of practice doing just that. As plaintiffs challenging that declaration have  
2 pointed out, Defendants’ actions threaten to suppress response rates to the Census, particularly from  
3 naturalized citizens and immigrants.

4 Now, the Department of Commerce has taken another step that threatens to impair the accuracy  
5 of the 2020 Census. In the midst of the COVID-19 pandemic, the Department of Commerce announced  
6 earlier this year that it would be extending the deadline for completion of the Census to October 31,  
7 2020 (among other Census-related deadlines), owing to the delayed start of the Department’s outreach  
8 to individuals who did not respond to mail-in Census forms. In early August, though, the Department  
9 reversed course, imposing a September 30 deadline for completion of the Census, potentially resulting  
10 in vast undercounting. *See* Hansi Lo Wang, *Census Cuts All Counting Efforts Short by a Month*, NPR  
11 (Aug. 3, 2020), <https://n.pr/2DSGB1A>.

12 The United States Constitution requires an “actual Enumeration” of the people to allow the  
13 “Representatives” to “be apportioned among the several States which may be included within this  
14 Union, according to their respective Numbers.” U.S. Const. art. I, § 2, cl. 3. But the importance of  
15 accurate Census data extends well beyond its constitutional purpose of apportioning congressional  
16 representation. Census data is made public, *see* 13 U.S.C. § 9(a), and social scientists have called  
17 Census responses “an irreplaceable source of data for researchers,” Consortium of Soc. Sci. Ass’ns,  
18 *COSSA Statement on the Impact of a Citizenship Question in the 2020 Decennial Census* (Mar. 27,  
19 2018), <https://bit.ly/3fWyMWa>. “Today, policy makers at all levels of government, as well as private  
20 businesses, households, researchers, and nonprofit organizations, rely on an accurate census in myriad  
21 ways that range far beyond the single fact of how many people live in each state.” Report, Council of  
22 Econ. Advisers, *The Use of Census Data: An Analytical Review* (Apr. 1, 2000), <https://bit.ly/2Tv1PJP>.  
23 *Amici* respectfully ask this Court to protect the Census, the invaluable data it provides, and ensure that  
24 businesses around the country have access to this vital tool.

### 25 III. ARGUMENT

26 An accurate Census is a cornerstone of our democracy. Knowing that the “calculation of  
27 populations could be and often were skewed for political or financial purposes,” the Framers “chose to  
28 make an ‘actual Enumeration’ part of our constitutional structure” in order “to preclude the availability

1 of methods that permit political manipulation.” *Utah v. Evans*, 536 U.S. 452, 500, 507, 510 (2002)  
2 (Thomas, J., concurring in part and dissenting in part); *see also Wisconsin v. City of New York*, 517  
3 U.S. 1, 6 (1996) (“[E]ach [decennial Census] was designed with the goal of accomplishing an ‘actual  
4 Enumeration’ of the population.”). The Census was an integral part of the design of the new  
5 government at the Founding—an attempt to ensure that the House of Representatives would be based  
6 on proportional representation of the people (not just the voters or even the citizens), itself essential to  
7 the “Great Compromise” that yielded our bicameral legislature. *See Wesberry v. Sanders*, 376 U.S. 1,  
8 12–14 (1964); *Bode v. Nat’l Democratic Party*, 452 F.2d 1302, 1307 (D.C. Cir. 1971).

9       Indeed, our nation’s earliest leaders recognized the importance of Census accuracy. For  
10 instance, when Thomas Jefferson supervised the nation’s first Census as Secretary of State in 1790, he  
11 expected a population count of at least 4 million people. Yet the Census ultimately revealed a nation  
12 of just 3.9 million people, much to the surprise and concern of Jefferson and President George  
13 Washington. Jefferson thought that the Census had significantly undercounted the population, perhaps  
14 by several hundred thousand residents. U.S. Census Bureau, *Directors 1790 – 1810* (last revised Dec.  
15 17, 2019), <https://bit.ly/2VKtnrs>. And Washington, who had expected a population count about five  
16 percent higher, was similarly chagrined, blaming the “‘inaccuracy’ on avoidance by some residents as  
17 well as on negligence by those responsible for taking the census.” Kenneth Prewitt, *The American  
18 People Census 2000: Politics and Science in Census Taking* 6 (Russell Sage Foundation 2003),  
19 <https://wapo.st/2NWwjyp>. By making these concerns about the Census public, then-Secretary  
20 Jefferson “helped alert the Nation to the importance of accuracy in the numbers used to describe the  
21 society.” 154 Cong. Rec. H4890 (June 4, 2008) (statement of Rep. Johnson).

22       In the 1850s, Congress expanded the Census’s traditional role and included a number of  
23 questions on the Census aimed at learning more about the characteristics of the U.S. population. *See*  
24 Douglas A. Kysar, *Kids & Cul-de-Sacs: Census 2000 and the Reproduction of Consumer Culture*, 87  
25 Cornell L. Rev. 853, 862 (2002). At the turn of the twentieth century, as the Census grew more  
26 complex, Congress created the Census Bureau, which opened its doors in 1902. *See* Permanent Census  
27 Act, Pub. L. No. 27 (1902). By that time, the Census’s mission to “foster, promote, and develop the  
28 foreign and domestic commerce” was codified, 15 U.S.C. § 1512, and the Census Bureau’s energies

1 “were directed toward the improvement of business statistics, . . . and toward the collection of data that  
2 might foster improvements in the national economy without the heavy hand of government ‘planning,’”  
3 Kysar, *supra*, at 862–63 (some internal quotation marks omitted).

4 The Census Bureau’s decision to reverse the extended deadlines for completion of the Census,  
5 however, threatens to undermine that core mission by compromising the completeness and accuracy of  
6 the Census account. Four former Census Bureau Directors have publicly stated their “expert opinion”  
7 that “failing to extend the deadlines . . . will result in seriously incomplete enumerations in many areas  
8 across our country.” Press Release, Former Census Bureau Directors, *On the Importance of Extending*  
9 *the 2020 Census Statutory Deadlines to Achieve a Fair and Accurate Enumeration of the United States*  
10 (Aug. 4, 2020), <https://perma.cc/NX36-YFFE>. The American Statistical Association agrees. *See* Decl.  
11 of Sadik Huseny, Ex. 10, ECF No. 37-10. Plaintiffs here have also submitted expert testimony from a  
12 former Census Bureau Director and former Bureau Chief Scientist that failing to reinstate the extended  
13 deadlines will ‘severely compromise the quality, accuracy, reliability, and indeed the legitimacy of the  
14 2020 Census numbers.’ Decl. of Dr. Thomas A. Louis ¶ 1, ECF No. 36-4; *see also* Decl. of John  
15 Thompson ¶¶ 5, 21–27, ECF No. 36-2; Decl. of D. Sunshine Hillygus Ph.D. ¶¶ 5, 39–42, ECF No.  
16 36-3]. The numbers available so far already indicate a lower response rate than in years past. *See* Mot.  
17 for Stay and Prelim. Inj. 26, ECF No. 36.

18 Lower response rates mean less accurate Census data, which will have negative effects on *amici*  
19 and other businesses that use Census data in a variety of ways to plan their operations and products.

20 **A. Inaccurate Census Data Will Harm Businesses That Rely On The Census For Marketing,**  
21 **Product Development, Operations, And Other Purposes**

22 Businesses have long used Census data in a variety of strategic ways to plan their operations,  
23 enhance their understanding of their customer base, and develop products that meet consumer needs.  
24 *See* Kysar, *supra*, at 854–56; *see also* Rhett Buttle & Katie Vlietstra Wonnemberg, *Why All Businesses*  
25 *Should Care About the 2020 Census*, The Hill (Mar. 4, 2020), <https://perma.cc/J3FC-KFVY> (“Census  
26 data have been invaluable in guiding business decisions for more than 200 years.”). The Census Bureau  
27 itself recognizes the value businesses derive from the types of data the Census provides; it even  
28 provides companies with a “Census Business Builder,” which is “a suite of services that provide

1 selected demographic and economic data from the Census Bureau tailored to specific types of users in  
 2 a simple to access and use format.” U.S. Census Bureau, *Census Business Builder* (Dec. 13, 2018),  
 3 <https://perma.cc/8HRY-88TH>. The Bureau notes that this data can “help you start or grow a business  
 4 or understand the business landscape for a region.” *Id.*; see also SBA, *Market Research and*  
 5 *Competitive Analysis*, <https://perma.cc/9CAA-9T85>. Thus, “[t]he vitality of the nation’s economy and  
 6 the 6 million businesses inside that economy are greatly affected by decisions made using  
 7 census-derived data.” *The Economic Impacts of the 2020 Census and Business Uses of Federal Data:*  
 8 *Hearing Before the Joint Economic Comm.* 3, 116th Cong. 33 (2019) (statement of Andrew Reamer)  
 9 (“Reamer Testimony”); see also William P. O’Hare, *The Importance of Census Accuracy: Uses of*  
 10 *Census Data, in* Differential Undercounts in the U.S. Census 19 (2019); Comm. for Econ. Dev., *The*  
 11 *2020 Census: The Importance of an Accurate and Robust Accounting of our Nation’s Population* 3–4  
 12 (Apr. 15, 2019), <https://perma.cc/AHY8-JTQY>.

13 Crediting Plaintiff’s evidence, the Census Bureau’s revised and rushed deadlines would result  
 14 in significantly flawed data, undercounting millions of people. For businesses, undercounting hundreds  
 15 of thousands or even millions of people matters, particularly in the context of low-margin industries  
 16 where even slight adjustments of data could materially affect the accuracy of projected revenue and  
 17 costs. If this exclusion is adopted—rendering Census data less accurate—each business that uses  
 18 Census data for these purposes will be harmed.

19 **1. Inaccurate Census Data Will Harm Businesses That Use Census Data In Deciding**  
 20 **Where To Open New Locations**

21 Businesses rely on Census data when they plan the placement and construction of new locations  
 22 or markets. That data lets businesses maximize the effectiveness of a location and capitalize on a  
 23 particular region’s needs or preferences. Building a new location is a significant undertaking, requiring  
 24 major capital investments. See Melissa Martin, *Costs of Starting a Business: Bricks & Mortar Retail*  
 25 *Startup*, StartupNation (June 8, 2006), <https://perma.cc/54QP-KGHW>. Mistakes about where to place  
 26 a store, warehouse, or other facility can harm not only a business’s overall outlook, but also the  
 27 communities that need (or don’t need) such a facility.

28

1 Many retail merchants use Census data to strategically place their stores and other facilities.  
2 See Amy Merrick, *New Population Data Will Help Marketers Pitch Their Products*, Wall St. J. (Feb.  
3 14, 2001), <https://on.wsj.com/2V0hFck>. Some businesses rely on Census data to evaluate what makes  
4 a market desirable and where to place stores within a market. See Tom Foster, *Warby Parker Grew to*  
5 *\$250 Million in Sales Through Disciplined Growth. Now It's Time to Get Aggressive*, Inc. (June 2017),  
6 <https://perma.cc/73B7-4W9U>; see also Reamer Testimony at 33. Others look at the Census profile for  
7 a new area to see how it compares with an existing market and to determine whether a new location is  
8 likely to generate more, less, or the same business. See Jonathan Weber, *Census Data Assists Business*  
9 *Where It Counts: Accurate Demographics*, L.A. Times (Jan. 2, 1990), <https://perma.cc/P3NV-84YU>.

10 A business might use Census data to target a small location in a state where its customers are  
11 most likely to reside and where a new location could be profitable. See Paul R. Voss, *Targeting*  
12 *Wealthy Ex-Wisconsiners in Florida: A Case Study in Applied Demography*, in *Demographics: A*  
13 *Casebook for Business and Government* 109 (Hallie J. Kintner et al. eds., 1997). The Census Bureau  
14 even provides an interactive population map that businesses can use to examine population data “at the  
15 most granular level,” including “age, race, ethnicity and housing status.” Jenny Dinnen, *3 Ways You*  
16 *Can Use Census Data*, MacKenzie Corp. (Oct. 23, 2013), <https://perma.cc/5CQM-XUYN>. Without  
17 accurate Census data on which to base location decisions, businesses would lose a tool that has become  
18 crucial to their survival and growth.

19 The effects of inaccurate Census data on a company’s decision of where to place a new location  
20 would harm not only that business, but also its surrounding community. Accurate data helps businesses  
21 take risks on changing and developing neighborhoods. Unreliable data might mean businesses will  
22 open fewer locations in new communities, depriving businesses of new markets and communities of  
23 new stores or services.

24 Healthcare providers are a good example of this effect because they use Census data to  
25 understand community needs. See National Research Council, *Modernizing the U.S. Census* 297  
26 (1995). A hospital can use Census data regarding residents in the area of a new location to determine  
27 how many and what kind of doctors will likely be needed at that location. See *id.* This same analysis  
28 can be performed to determine the need for certain health services in a given area—for example, a

1 region densely populated with young families will be more in need of obstetrical or family practice  
2 services than a region populated primarily with retirees. *See id.* at 298; *see also* Richard K. Thomas,  
3 *Using Demographic Analysis in Health Services Planning: A Case Study in Obstetrical Services, in*  
4 *Demographics: A Casebook for Business and Government* 159, 167–68 (RAND Corp. 1997)  
5 (examining the age of women in an area to determine the need for a new obstetrical facility). Inaccurate  
6 Census data thus may lead to some communities having inadequate healthcare in light of business  
7 decisions driven by this data, just as other communities may face an inefficient influx of healthcare  
8 resources beyond what is actually needed.

## 9           **2.       Inaccurate Census Data Will Harm Businesses That Use Census Data In Product** 10                   **Development, Marketing, And Placement**

11           Inaccurate Census data will also affect the development and marketing of numerous products  
12 around the country. Businesses use Census data to inform decisions about product development and  
13 placement. A retail business may, for instance, rely on demographic data to determine which products  
14 are going to sell best in which regions, and calibrate each store’s stock accordingly. *See* Diane W.  
15 Schanzenbach & Michael R. Strain, *Act Now to Save the 2020 Census*, Bloomberg Opinion (Aug. 11,  
16 2017), <https://perma.cc/HP9M-845Z> (“If you walk into a Target store in suburban Florida, the items  
17 on the shelves are different from what is in a Target store in downtown Washington D.C. Target makes  
18 these decisions in large part using government data.”). As the Association of National Advertisers has  
19 explained, “[m]arketing decisions/investments are often made based on population counts,” and  
20 inaccurate data would affect the data that businesses “rely on to quantify the marketplace, and thereby  
21 undersize the business opportunity.” Ass’n of Nat’l Advertisers, *ANA Members Oppose Addition of*  
22 *Citizenship Question for 2020 Census 2* (June 12, 2018), <https://perma.cc/N9NR-9LED> (quotation  
23 marks omitted).

24           Entire product lines may even be developed based on data culled from the Census. *See, e.g.,*  
25 *The Use of Census Data: An Analytical Review, supra* (noting that accurate Census data helps  
26 “[m]anufacturers of baby products such as baby food, clothes, diapers, and toys, and manufacturers of  
27 maternity clothes and greeting cards . . . develop . . . their product lines”). And even independent  
28 market research can be aided by the Census—market researchers can use Census data to make accurate



1 inferences about survey answers based on their geographic location or their other survey responses.  
2 *See* Reamer Testimony at 33.

3 Flawed Census data can also impact customer outreach. For example, because utility  
4 companies often offer lower rates for poorer, elderly, or disabled customers, utility companies use  
5 Census data to determine which areas are most likely to need those special rates and reach out to  
6 customers in those areas to evaluate eligibility. *See Modernizing the U.S. Census, supra*, at 297. Cable  
7 television companies may use Census data to target advertising for pay-per-view events to those areas  
8 whose residents are most likely to purchase the event. *See id.* at 296. And when a car manufacturer  
9 learned through customer research that its vehicles were popular with people in the nursing profession,  
10 it used data from the Census to tailor its regional advertising to that demographic. *See Kysar, supra*,  
11 at 885. Inaccurate Census data would weaken the ability of businesses to adapt their marketing and  
12 outreach strategies to a changing population, resulting in wasted dollars for businesses and unwanted  
13 advertising for customers.

### 14 **3. Inaccurate Census Data Will Impair The Accurate And Equitable Allocation Of** 15 **Federal Support**

16 The federal government relies on Census data to allocate and distribute federal support and  
17 funding, and inaccurate Census data threatens to harm businesses and their communities who rely on  
18 that support. For example, under the New Market Tax Credit (“NMTC”)—a federal program designed  
19 to stimulate investment in distressed communities—a business investment may qualify for special tax  
20 treatment if it occurs in an area with certain concentrations of low- or moderate-income households.  
21 *See* Cmty. Dev. Fin. Insts., *New Markets Tax Credit Program*, <https://perma.cc/LS87-P5PD>; Robert  
22 Shapiro, *The 2020 Census May Be Wildly Inaccurate—And It Matters More Than You Think*,  
23 Brookings Inst. (Aug. 31, 2017), <https://perma.cc/6T77-KJFU>.<sup>2</sup> Or a nonprofit organization, such as a  
24 rural health clinic, may use Census data for a special federal designation based on location and  
25 population served. *See Modernizing the U.S. Census, supra*, at 298. Businesses rely on Census data

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26  
27 <sup>2</sup> An NMTC-eligible investment must be located in a designated “low-income community,”  
28 defined by U.S. Census data as a Census tract with a poverty rate of at least 20 percent or with  
a median family income that does not exceed 80 percent of the statewide median family income.  
26 U.S.C. § 45D(e).

1 to know whether they will be entitled to federal support, and inaccurate Census data risks depriving  
2 businesses of that needed support.

3 More broadly, the federal government relies on Census data to allocate and distribute federal  
4 funding—to the tune of about \$700 billion—and inaccurate Census data can therefore affect businesses  
5 that rely directly or indirectly on those funds. *See* Public Comment – Coalition of Philanthropic  
6 Organizations (Mar. 21, 2018), <https://perma.cc/MB9X-ZRHG> (“[R]ecent decennial censuses have  
7 resulted in net undercounts of many communities, with consequences for . . . disbursing roughly \$700  
8 billion in federal funds.”). In 2015 alone, the federal government used Census data to distribute over  
9 \$675 billion in federal funding to a variety of programs. *See* Marisa Hotchkiss & Jessica Phelan, *Uses*  
10 *of Census Bureau Data in Federal Funds Distribution: A New Design for the 21st Century* 3 (Sept.  
11 2017), <https://perma.cc/LNF6-WYAU>; *see also* *Wisconsin*, 517 U.S. at 5–6 (“Today, census data also  
12 have important consequences not delineated in the Constitution: The Federal Government considers  
13 census data in dispensing funds through federal programs to the States . . .”). Those billions of dollars  
14 were funneled through 132 different programs, ranging from subsidies for school lunches to historic  
15 preservation. *See* Hotchkiss & Phelan, *supra*, at 16–17.

16 The bulk of Census-guided federal assistance goes to state governments through a handful of  
17 grant programs that aid low-income households and support highway infrastructure. *See* Andrew D.  
18 Reamer, *Counting for Dollars: The Role of the Decennial Census in the Geographic Distribution of*  
19 *Federal Funds* 10, Brookings Inst. (Mar. 9, 2010), <https://perma.cc/3WBG-JCDK>.<sup>3</sup> In 2008, using  
20 Census data, the federal government distributed over \$36 billion in federal funds via the Federal-Aid  
21 Highway Program, and distributed an additional \$10 billion to fund other transportation needs. *See id.*  
22 at 11–12. Businesses have an interest in ensuring that the basic infrastructure of their communities—  
23 including the availability of accessible and well-kept highways—is supported by federal funding. That  
24 is especially true for businesses that depend on federally supported highways for the transportation of  
25 goods. And an inaccurate Census threatens the proper allocation of that funding.

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26  
27  
28 <sup>3</sup> In 2008, \$261.1 billion was distributed to states through Medicaid, the largest Census-guided  
assistance program. *See* Reamer, *supra*, at 10.



1           Businesses also have an interest in the federal funding allocated to other programs. For  
2 example, through the Workforce Innovation and Opportunity Act (“WIOA”), the federal government  
3 subsidizes the education and workforce training of youths and adults from disadvantaged backgrounds  
4 and areas. *See* 29 U.S.C. §§ 3162, 3172. The allocation of those subsidies is determined using the  
5 “most recent satisfactory data from the Bureau of the Census.” 29 U.S.C. § 3242(a). And some  
6 organizations, like *amicus* General Assembly, enroll students that rely on that federal funding, or offer  
7 programs that are funded by WIOA. The Department of Labor allocated over \$7 billion in 2008 on the  
8 basis of Census data, *see* Reamer, *supra*, at 13, some of which went to educational institutions like  
9 *amicus* General Assembly to provide free training programs to underserved and overlooked talent.

10           Companies may have more specific interests depending on their size or line of business. For  
11 example, many new businesses have an interest in the federal funding that goes to Small Business  
12 Development Centers, which receive federal funding to provide small companies and entrepreneurs  
13 with free consulting and training services. *See* SBA, *Office of Small Business Development Centers*,  
14 <https://perma.cc/FK4V-D3T6>. A local outdoors-equipment retail store, for example, whose business  
15 depends in part on the availability and quality of nearby outdoor activities will likely have an interest  
16 in ensuring that the surrounding community is receiving adequate support from federal programs such  
17 as the Wildlife Restoration Program, *see* U.S. Fish & Wildlife Serv., *Wildlife Restoration Program –*  
18 *Overview* (Feb. 2, 2018), <https://perma.cc/9JWJ-DWM9> (providing funding to restore, conserve,  
19 manage, and enhance wild birds and mammals and their habitat); *see also* U.S. Fish & Wildlife Serv.,  
20 *State Wildlife Grant Program – Overview* (May 15, 2019), <https://perma.cc/EQC4-AMZM> (providing  
21 funding to develop and implement programs that benefit wildlife and their habitats), and the Water  
22 Pollution Control Grant Program, *see* EPA, *Learn About the Water Pollution Control (Section 106)*  
23 *Grant Program* (Jan. 19, 2018), <https://bit.ly/2EUinRj> (providing funding to states and agencies to  
24 build and sustain effective water quality programs), both of which rely on the Census to determine  
25 allocation of funding.

26           Established businesses in communities may also have a more general interest in ensuring that  
27 the communities they serve—and that make up their customer and employee bases—are receiving the  
28 needed federal assistance to which they are entitled. The U.S. Department of Education, for instance,

1 relies on Census data to allocate funds to educational agencies and schools with high numbers or  
 2 percentages of children from low-income families. See U.S. Dep't of Educ., *Improving Basic*  
 3 *Programs Operated by Local Educational Agencies (Title I, Part A)*, (Oct. 24, 2018),  
 4 <https://bit.ly/2lQzI5X>. The Department of Education allocated over \$10 billion in special education  
 5 grants to states in 2008, based in large part on Census data. See Reamer, *supra*, at 11. It distributed  
 6 over \$7 billion in Title I grants to local educational agencies during the same time period. *Id.*  
 7 Businesses in such a community, like all members of a community, benefit from strong educational  
 8 programs, particularly when that business depends on an educated local workforce to staff its facilities.  
 9 Federal funds are also allocated through Community Development Block Grant Programs—again on  
 10 the basis of Census data—to help develop urban communities and improve living and economic  
 11 conditions. See HUD Exchange, *CDBG: Community Development Block Grant Programs*,  
 12 <https://bit.ly/2VSnCb1>. Again, businesses benefit when their communities receive the infrastructure  
 13 support they need to thrive. But an inaccurate Census risks misallocating funds to each of these  
 14 programs, harming businesses and their communities.

15 \* \* \*

16 These varied and documented uses of Census data are possible only because businesses can  
 17 depend on the Census to provide accurate demographic information about customers and to determine  
 18 how best to engage with their local communities. Divesting Census officials of the time needed to  
 19 collect and analyze Census data threatens to undermine the validity of this data, and therefore  
 20 substantially reduce its value to businesses. If businesses cannot rely on the Census to provide usable,  
 21 accurate data, they will be hamstrung in their ability to track and adapt to customers' changing needs  
 22 and preferences. Competitive businesses must always be evolving to respond to changes in the market,  
 23 and inaccuracies in the Census data will impede their ability to do so.

24 **B. Inaccurate Census Data Will Impact Businesses More Substantially As Businesses**  
 25 **Become Increasingly Data-Driven**

26 Inaccurate Census data would be especially disruptive to businesses today. Companies  
 27 increasingly rely on data-driven analytics to provide products and services that meet customers'  
 28 specific needs and wants. While businesses in the past adopted a more product-oriented approach—

1 focusing on designing products they believed customers would want—businesses now operate on a  
2 more customer-oriented basis, seeking to understand customers’ needs before they invest resources  
3 into design and implementation. See Chris Rygielski et al., *Data Mining Techniques for Customer*  
4 *Relationship Management*, 24 Tech. in Soc’y 483, 484 (2002). The value of accurate and complete  
5 data is heightened by the need for businesses to respond quickly to changing market conditions and  
6 preferences. See Syed Riaz Ahmed, *Applications of Data Mining in Retail Business*, Proceedings of  
7 the Int’l Conference on Info. Tech.: Coding and Computing, at 2 (2004). Companies seeking to gain a  
8 competitive edge over their competitors therefore rely on their ability “to better manage the knowledge  
9 regarding the critical elements of their environment.” John H. Heinrichs & Jeen-Su Lim, *Integrating*  
10 *Web-Based Data Mining Tools with Business Models for Knowledge Management*, 35 Decision  
11 Support Sys. 103, 105 (2003). Census data has been, and will continue to be, integral to this modern  
12 focus, rendering an accurate Census imperative to business growth and innovation. See AJ Agrawal,  
13 *Why Data Is Important for Companies and Why Innovation Is On the Way*, Inc. (Mar. 24, 2016),  
14 <https://bit.ly/2qY77iM> (asserting that in an era in which “[p]eople are generating more [data] than ever  
15 before,” this data is becoming “essential for companies and it’s going to spell an era of innovation”).

16 The emphasis on data analytics has led to the rise of entire businesses built around processing  
17 and analyzing demographic data, and advising consumers based on that data—including that provided  
18 in the Census. Census data can be complicated (and costly) to organize and interpret, and some  
19 businesses specialize in translating that raw data into usable information. See Weber, *supra*; see also  
20 *Alteryx Powers U.S. Census Data Analysis* (Aug. 27, 2012), <https://bit.ly/2JPFxy8>. Some entities use  
21 Census data to forecast demographic trends and provide those projections to businesses that are looking  
22 for growth opportunities. See *Claritas Demographic Update Methodology*, Claritas (Sept. 2006),  
23 <https://bit.ly/2E8u4q>; Geolytics, *Estimates/Projections*, <https://bit.ly/3iFQNtj> (offering to provide  
24 Census analytics that generate “the most up-to-date information for planning and marketing). These  
25 companies specialize in the provision of Census-based segmentation services—an analysis that divides  
26 up the U.S. population into various segments sharing key traits and behavioral patterns that can be used  
27 to predict consumer behavior. See *Kysar, supra*, at 880–81. And these businesses rely, of course, on  
28 accurate Census data to provide those services.

1 Census data is also critical to understanding and making use of marketing research gathered  
2 through other means. Many businesses have commercial databases that store information about their  
3 customers and target audience. See Scott McDonald, *A 2020 Census Flop Would Pose a Danger to*  
4 *U.S. Businesses*, Forbes (Dec. 6, 2017), <https://bit.ly/2Uv6ckz>. But marketing research gathered from  
5 a sample population can be skewed or inaccurate, and so businesses rely on Census data to provide a  
6 benchmark to “evaluate the quality of the dataset and provide a basis for statistical adjustments.” *Id.*

7 Census data is also critical to business because that data is used to validate other national surveys  
8 key to most American businesses, including the American Community Survey (ACS)—formerly the  
9 decennial census long form—and the Economic Census. The ACS is particularly important to data-  
10 driven businesses. See Office of the Chief Economist, Dep’t of Commerce, *The Value of the American*  
11 *Community Survey: Smart Government, Competitive Businesses, and Informed Citizens* 33 (Apr.  
12 2015), <https://bit.ly/3fLJI8H> (explaining that “businesses rely on [Census data] to make site selection  
13 decisions”). Realtors, for instance, use the ACS and the Census to “develop insights on market trends  
14 and policy issues.” Letter from Nat’l Ass’n of Realtors to Sen. Claire McCaskill (Feb. 25, 2018),  
15 <https://bit.ly/2HQ1dHF>. But the ACS itself depends on accurate Census data. See Andrew Reamer,  
16 Geo. Wash. Inst. of Pub. Policy, *Counting for Dollars: A Study of Census-guided Financial Assistance*  
17 *to Rural America* (Oct. 11, 2018), <https://bit.ly/2Onk0LO>. If Census data is incomplete because of  
18 inadequate time to conduct follow-up inquiries, “[e]very subsequent survey and study that intends to  
19 be statistically representative of the U.S. population will be built on decennial data, including the  
20 American Community Survey (ACS), the Economic Census and every other federal government  
21 survey, and any inaccuracies will be felt for at least a decade.” Howard Fienberg, *Remove the*  
22 *Citizenship Question from 2020 Census, Says Marketing Research & Data Analytics Industry*, Insights  
23 Ass’n (Aug. 7, 2018), <https://bit.ly/2OVzhDi> (quotation marks omitted).

24 Location intelligence providers repurpose Census data to provide insights to customers and to  
25 help them draw better, data-driven inferences about how to run their organizations. See Greg Sterling,  
26 *Chipotle Customers Are Smarter Than McDonald’s And Other Insights From Smartphone Data*, Mktg.  
27 Land (June 24, 2014), <https://mklnd.com/2ESReye>. Real estate aggregators can use Census data to  
28 compile their listings and real estate estimates. Harv. Bus. Sch., *Zillow: Ahead of Its Time or Falling*

1 *Behind* (Nov. 18, 2016), <https://bit.ly/2VSEkr2>. Businesses like these depend on advanced data  
2 processing, and among the information these businesses process is Census data, the accuracy of which  
3 is and will continue to be essential to their success.

4 \* \* \*

5 Although it is impossible to determine how innovators and entrepreneurs will use Census data  
6 in the future, one thing is clear: businesses will keep using it in important ways so long as it is accurate.  
7 They will seek to leverage key data and determine new, profitable uses to draw from it. Ensuring the  
8 accuracy of this data is essential, and any attempt by the federal government to diminish the Census  
9 impairs the ability of businesses across the country to be effective.

10 **IV. CONCLUSION**

11 For the reasons stated above, *amici* support Plaintiffs’ motion for preliminary injunction.

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Respectfully submitted,

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