

**GIBSON, DUNN & CRUTCHER LLP**

Stuart F. Delery (*pro hac vice* pending)  
sdelery@gibsondunn.com  
1050 Connecticut Avenue, N.W.  
Washington, DC 20036-5306  
Tel.: 202-887-3650  
Fax: 202-467-0539

Alexander H. Southwell (*pro hac vice* pending)  
asouthwell@gibsondunn.com  
200 Park Avenue  
New York, New York 10166  
Tel.: 212-351-3981  
Fax: 212-351-6281

Julian W. Kleinbrodt (CA Bar # 302085)  
jkleinbrodt@gibsondunn.com  
555 Mission Street, Suite 3000  
San Francisco, CA 94105-0921  
Tel.: 415-393-8382  
Fax: 415-374-8470

*Attorneys for Proposed Amici Curiae*

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA, *et al.*,

Plaintiffs,

v.

WILBUR L. ROSS, *et al.*,

Defendants.

Case Nos. 18-cv-01865-RS  
18-cv-02279-RS

**BRIEF OF *AMICI CURIAE* TECH:NYC,  
UNIVISION COMMUNICATIONS INC.,  
GENERAL ASSEMBLY, TOPIA, AND THE  
MINNEAPOLIS REGIONAL CHAMBER OF  
COMMERCE IN SUPPORT OF PLAINTIFFS**

Date: March 7, 2019  
Time: 1:30 p.m.  
Judge: Honorable Richard Seeborg  
Dept.: 3

CITY OF SAN JOSE, *et al.*,

Plaintiffs,

v.

WILBUR L. ROSS, *et al.*,

Defendants.

**TABLE OF CONTENTS**

	<u>Page</u>
<b>I.</b> INTERESTS OF <i>AMICI CURIAE</i> .....	1
<b>II.</b> INTRODUCTION .....	2
<b>III.</b> ARGUMENT .....	4
A. The Census Requires An Accurate Count Of The Entire Population, Which The Citizenship Question Threatens .....	4
B. Inaccurate Census Data Will Harm Businesses That Rely On The Census For Marketing, Product Development, Operations, And Other Purposes .....	6
1. Inaccurate Census Data Will Harm Businesses That Use That Data In Deciding Where To Open Brick-And-Mortar Locations ...	7
2. The Citizenship Question And Its Concomitant Reduction In Census Response Rates Will Harm Businesses That Use Census Data In Product Development, Marketing, And Placement.....	8
3. Inaccurate Census Data Will Impair The Ability Of Businesses To Make Informed Judgments About Eligibility For Federal Support .....	9
4. Inaccurate Census Data Will Harm Businesses That Rely On Proportionate Allocations Of Federal Funding .....	10
C. Inaccurate Census Data Will Impact Businesses More Substantially As Businesses Become Increasingly Data-Driven .....	13
<b>IV.</b> CONCLUSION .....	14

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
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26  
27  
28

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**I. INTERESTS OF *AMICI CURIAE***

*Amici* submit this brief to provide important context regarding how *amici* and businesses like them rely on Census data, how the proposed citizenship question will make the Census less reliable, and how inaccurate Census data harms businesses and ultimately consumers.

Tech:NYC is a nonprofit organization working to bring principled New Yorkers together to support a successful technology ecosystem. Tech:NYC has approximately 650 member companies, including some of the most prominent and successful tech companies in the nation. Many of its members receive federal funding based on Census data or use Census data to plan their operations. Tech:NYC and its members would be harmed by inaccurate Census data.

Univision Communications Inc. is the leading media company serving Hispanic America. It uses and relies on Census data in conveying accurate news and information to its viewers and in conducting its business operations, in addition to doing business regularly with advertisers that also rely on such data in their decision making. Univision and its viewers would be harmed by inaccurate Census data.

General Assembly is a global educational institution with 22 locations around the world, offering online courses, onsite trainings for Fortune 500 companies and governmental organizations, and a global community of professionals. General Assembly and many of its students rely on federal funding that is impacted by Census data. General Assembly and its students would be harmed by inaccurate Census data.

Topia is a talent mobility software suite that companies use to move their employees between locations and roles. Topia values being a global citizen and equality of opportunity for everyone.

The Minneapolis Regional Chamber of Commerce advocates on behalf of the business community in the Minneapolis Saint Paul region and provides various services for its members. Many of the Chamber's members and the communities in which they operate depend on accurate Census data to plan their operations or receive federal funding impacted by Census data. The Regional Chamber and its members would be harmed by inaccurate Census data.

## II. INTRODUCTION

1  
2 Accurate Census data is important to businesses. They use that data to plan new locations and  
3 future projects, and rely on that data for the allocation of important federal funding. But the Census  
4 Bureau’s proposed Citizenship Question threatens to reduce response rates, particularly by  
5 naturalized citizens and immigrants, and thereby to impair the accuracy of the Census. *Amici* submit  
6 this brief to explain their perspective on the serious harm that will result if the Citizenship Question is  
7 adopted—harm that the Secretary should have considered before deciding to ask it.

8 The United States Constitution requires an “actual Enumeration” of the people to allow the  
9 “Representatives” to “be apportioned among the several states which may be included within this  
10 union, according to their respective numbers.” U.S. Const. art. I, § 2, cl. 3. But the importance of  
11 accurate Census data extends well beyond its constitutional purpose of apportioning congressional  
12 representation. Census data is made public, *see* 13 U.S.C. § 9(a), and social scientists have called  
13 Census responses “an irreplaceable source of data for researchers,” Consortium of Social Science  
14 Ass’ns, COSSA Statement on the Impact of a Citizenship Question in the 2020 Decennial Census  
15 (Mar. 27, 2018), [http://www.cossa.org/wp-content/uploads/2018/03/Census-Citizenship-Question-3-](http://www.cossa.org/wp-content/uploads/2018/03/Census-Citizenship-Question-3-27-18.pdf)  
16 [27-18.pdf](http://www.cossa.org/wp-content/uploads/2018/03/Census-Citizenship-Question-3-27-18.pdf). “Today, policy makers at all levels of government, as well as private businesses,  
17 households, researchers, and nonprofit organizations, rely on an accurate census in myriad ways that  
18 range far beyond the single fact of how many people live in each state.” Report, Council of  
19 Economic Advisers, *The Use of Census Data: An Analytical Review* (Apr. 1, 2000),  
20 <https://clintonwhitehouse3.archives.gov/WH/EOP/CEA/html/censusreview.html>.

21 *Amici* are businesses and organizations that represent businesses in numerous industries that  
22 routinely use Census data to make business decisions and that will be impacted by an inaccurate  
23 Census. *Amici* include Univision Communications Inc., which uses Census data in conveying  
24 accurate news and information to its viewers and in conducting its business operations, in addition to  
25 doing business regularly with advertisers that also rely on such data in their decision making; and  
26 General Assembly, an educational institution whose students rely on federal funding impacted by  
27 Census data. *Amici* also include Tech:NYC and the Minneapolis Regional Chamber of Commerce,  
28

1 which represent hundreds of businesses that rely on Census data in making business decisions or  
2 receive federal funding tied to Census data.

3 While businesses have a number of resources at their disposal to help them understand the  
4 traits, preferences, and distribution of their customers, the Census is a particularly important tool. *See*  
5 Paul Farhi, *For Business, Census Is a Marketing Data Motherlode*, Wash. Post, Mar. 17, 1990. In  
6 the words of a large group of current and former business leaders—“[t]he decennial Census provides  
7 critical data that informs decision-making in both the private and public sectors,” and which is  
8 regularly used “to determine where to locate stores and facilities, find qualified workers, and market  
9 products and services,” to name just a few of its many crucial applications. A.R.1252–54, Public  
10 Comment – Ready Nation (Mar. 22, 2018).

11 But as the Census Bureau’s own officials have concluded (backed by research the Bureau  
12 itself recently conducted), asking about a respondent’s citizenship as a part of the United States  
13 Census will result in reduced response rates, particularly by naturalized citizens and immigrants, and  
14 will thus yield inaccurate census data. *See New York v. U.S. Dep’t of Commerce*, 315 F. Supp. 3d  
15 766, 782 (S.D.N.Y. 2018). The inaccuracy resulting from the Citizenship Question will harm  
16 businesses. Put simply, Census data can play a role in many decisions by large and small businesses  
17 alike; as demonstrated below, introduction of the Citizenship Question and a resulting reduction in  
18 response rate and accuracy would negatively affect businesses in a variety of ways.

19 Plaintiffs challenge the Secretary of Commerce’s decision to add a question to the Census  
20 asking respondents about their citizenship. They contend that using the question violates the  
21 Enumeration Clause and that the Secretary failed to follow the requirements of the Administrative  
22 Procedure Act (“APA”). Whether the Secretary adequately considered the threat to Census accuracy  
23 the Citizenship Question poses—and the attendant harms—is at the core of Plaintiffs’ APA  
24 challenge. *See, e.g., Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463  
25 U.S. 29, 43 (1983) (agency action is arbitrary and capricious “if the agency . . . entirely failed to  
26 consider an important aspect of the problem, offered an explanation for its decision that runs counter  
27 to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in  
28 view or the product of agency expertise”). *See First Am. Compl.* ¶¶ 27, 53–59 (Dkt. 3:18-cv-01865,

1 ECF 12); Compl. ¶¶ 4, 31, 112–17 (Dkt. 3:18-cv-02279, ECF 1). And whether the Census is accurate  
2 is central to the Enumeration Clause claim. *See Wisconsin v. City of New York*, 517 U.S. 1, 6 (1996).  
3 This brief provides important context for Plaintiffs’ Enumeration Clause and APA claims.

### 4 III. ARGUMENT

#### 5 A. The Census Requires An Accurate Count Of The Entire Population, Which The 6 Citizenship Question Threatens

7 An accurate Census is a cornerstone of our democracy. Knowing that the “calculation of  
8 populations could be and often were skewed for political or financial purposes,” the Framers “chose  
9 to make an ‘actual Enumeration’ part of our constitutional structure” in order “to preclude the  
10 availability of methods that permit political manipulation.” *Utah v. Evans*, 536 U.S. 452, 500, 507,  
11 510 (2002) (Thomas, J., concurring in part and dissenting in part); *Wisconsin*, 517 U.S. at 6 (“[E]ach  
12 [decennial Census] was designed with the goal of accomplishing an ‘actual Enumeration’ of the  
13 population.”). The Census was an integral part of the design of the new government at the  
14 Founding—an attempt to ensure that the House of Representatives would be based on proportional  
15 representation, itself essential to the “Great Compromise” that yielded our bicameral legislature. *See*  
16 *Wesberry v. Sanders*, 376 U.S. 1, 12–14 (1964); *Bode v. Nat’l Democratic Party*, 452 F.2d 1302,  
17 1307 (D.C. Cir. 1971).

18 Indeed, our nation’s earliest leaders recognized the importance of Census accuracy. For  
19 instance, when Thomas Jefferson supervised the nation’s first Census as Secretary of State in 1790,  
20 he expected a population count of at least 4 million people. Yet the Census ultimately revealed a  
21 nation of just 3.9 million people, much to his and President George Washington’s surprise and  
22 concern. Jefferson thought that the Census had significantly undercounted the population, perhaps by  
23 several hundred thousand residents. United States Census Bureau, *Directors 1790 – 1810*, (Aug. 2,  
24 2017), [https://www.census.gov/history/www/census\\_then\\_now/director\\_biographies/  
25 directors\\_1790\\_-\\_1810.html](https://www.census.gov/history/www/census_then_now/director_biographies/directors_1790_-_1810.html). And Washington, who had expected a population count about 5 percent  
26 higher, was similarly chagrined, blaming the “‘inaccuracy’ on avoidance by some residents as well as  
27 on negligence by those responsible for taking the census.” Kenneth Prewitt, *The American People*  
28 *Census 2000: Politics and Science in Census Taking* 6 (Russell Sage Foundation 2003),

1 [http://www.washingtonpost.com/wp-srv/politics/documents/Pol\\_Sci.pdf?noredirect=on](http://www.washingtonpost.com/wp-srv/politics/documents/Pol_Sci.pdf?noredirect=on). By making  
2 these concerns about the Census public, then-Secretary Jefferson “helped alert the Nation to the  
3 importance of accuracy in the numbers used to describe the society.” 154 Cong. Rec. H4890 (June 4,  
4 2008) (statement of Rep. Johnson).

5 At the turn of the twentieth century, as the Census grew more complex, Congress created the  
6 Census Bureau, which opened its doors in 1902. *See, e.g.*, Permanent Census Act, Pub. L. 27 (1902).  
7 Congress authorized the Secretary of Commerce to “obtain . . . census information as necessary.” 13  
8 U.S.C. § 141(a). And as this Court has recognized, the Secretary does not have unreviewable  
9 discretion in carrying out that task. Instead, his decisions regarding the Census are judicially  
10 reviewable, and so a decision of the Secretary to add or remove a Census question must comply with  
11 all relevant laws, including the APA. *See Dep’t of Commerce*, 315 F. Supp. 3d at 793, 806.

12 In assessing the impact of various questions, the Secretary, the Commerce Department, and  
13 the Census Bureau must take into account the impact of the question on the conduct of the Census  
14 and on various communities. *Cf. State Farm*, 463 U.S. at 43. A failure to consider an “important  
15 aspect of the problem,” such as “evidence that runs counter to the agency’s decision,” will render  
16 agency action arbitrary and capricious. *Genuine Parts Co. v. Env’tl Prot. Agency*, 890 F.3d 304, 307  
17 (D.C. Cir. 2018) (internal quotation marks omitted). Courts have not hesitated to vacate agency  
18 action where the agency failed to meet this mandate. *See, e.g., Colo. Fire Sprinkler, Inc. v. Nat’l*  
19 *Labor Relations Bd.*, 891 F.3d 1031, 1041 (D.C. Cir. 2018); *Islander E. Pipeline Co., LLC v. Conn.*  
20 *Dep’t of Env’tl. Prot.*, 482 F.3d 79, 101 (2d Cir. 2006).

21 Available evidence indicates that the Citizenship Question threatens to impair the accuracy of  
22 the Census. For decades, the Census Bureau has recognized the negative impact a Citizenship  
23 Question would have, telling a court in 1980 that “any effort to ascertain citizenship will inevitably  
24 jeopardize the overall accuracy of the population count” because “[q]uestions as to citizenship are  
25 particularly sensitive in minority communities and would inevitably trigger hostility, resentment and  
26 refusal to cooperate.” *Fed’n for Am. Immigration Reform v. Klutznick*, 486 F. Supp. 564, 568  
27 (D.D.C. 1980); *see also Dep’t of Commerce*, 315 F. Supp. 3d at 782. And even *recent* research by  
28 the Census Bureau confirms that multilingual Census respondents fear their answers will not be kept

1 confidential, and may be reluctant to answer certain questions for that reason. *See* Mikelyn Meyers  
 2 & Patricia Goerman, *Respondent Confidentiality Concerns in Multilingual Pretesting Studies and*  
 3 *Possible Effects on Response Rates and Data Quality for the 2020 Census* 24–25 (U.S. Census  
 4 Bureau May 2018). Indeed, research shows that respondents are becoming more hesitant to answer a  
 5 comparable question about citizenship included in the American Community Survey. *See* William P.  
 6 O’Hare, *Citizenship Question Nonresponse: A Demographic Profile of People Who Do Not Answer*  
 7 *the American Community Survey Citizenship Question* 6–7 (Georgetown Center on Poverty and  
 8 Inequality Sept. 2018). Lower response rates from such communities means less accurate Census  
 9 data, inconsistent with the fundamental mandate of the Enumeration Clause.

10 **B. Inaccurate Census Data Will Harm Businesses That Rely On The Census For**  
 11 **Marketing, Product Development, Operations, And Other Purposes**

12 Businesses have long used Census data in a variety of strategic ways to plan their operations,  
 13 enhance their understanding of their customer base, and develop products that meet consumer needs.  
 14 *See* Douglas A. Kysar, *Kids & Cul-de-Sacs: Census 2000 and the Reproduction of Consumer*  
 15 *Culture*, 87 Cornell L. Rev. 853, 854–56 (2002). The Census Bureau itself recognizes the value  
 16 businesses derive from the types of data the Census provides. The Bureau even provides businesses  
 17 with a “Census Business Builder,” “a suite of services that provide selected demographic and  
 18 economic data from the Census Bureau tailored to specific types of users in a simple to access and  
 19 use format.” *See* Census Business Builder, <https://www.census.gov/data/data-tools/cbb.html>. The  
 20 Bureau notes that this data can “help you start or grow a business or understand the business  
 21 landscape for a region.” *Id.* If the Citizenship Question is adopted—rendering Census data less  
 22 accurate—each business that uses Census data for these purposes will be harmed.

23 A recent decision in the Southern District of New York expressly recognized businesses’  
 24 reliance on accurate Census data in striking down the Census Question as a violation of the APA.  
 25 *See New York v. U.S. Dep’t of Commerce*, 2019 WL 190285 (S.D.N.Y. Jan. 15, 2019). The court  
 26 noted that businesses, among others, rely on accurate census data in ways that go far beyond simply  
 27 calculating the number of people living in a state. *See id.* at \*5. The court went on to point out that  
 28 Census data is used “for such varied purposes as computing federal grant-in-aid benefits, drafting of

1 legislation, urban and regional planning, business planning, and academic and social studies.” *Id.*  
2 (quoting *Balridge v. Shapiro*, 455 U.S. 345, 353 n.9 (1982)). The court was right. As demonstrated  
3 further below, its observations on the importance of Census data to businesses are both accurate and  
4 relevant.

5 **1. Inaccurate Census Data Will Harm Businesses That Use That Data In Deciding**  
6 **Where To Open Brick-And-Mortar Locations**

7 Businesses rely on Census data when they plan the placement and construction of new  
8 locations. That data lets businesses maximize the effectiveness of a location and capitalize on a  
9 particular region’s needs or preferences. Building a new location is a significant undertaking,  
10 requiring major capital investments. Mistakes about where to place a store, warehouse, or other  
11 facility can harm not only a business’s overall outlook, but also the communities that need (or don’t  
12 need) such a facility. If a business misjudges where to place a new retail location, an operations hub,  
13 or other facility—and if a business incorrectly estimates demand for its products due to inaccurate  
14 data—both the business and its community will be harmed.

15 Many retail merchants use Census data to strategically place their stores and other facilities.  
16 *See* Amy Merrick, *New Data Will Let Starbucks Plan Store Openings, Help Blockbuster Stock Its*  
17 *Videos*, Wall St. J., Feb. 14, 2001; Malcolm Wheatley, *Data-Driven Location Choices Drive Latest*  
18 *Starbucks Surge*, SiteTech Systems, [http://www.sitetechnologies.com/data-driven-location-choices-](http://www.sitetechnologies.com/data-driven-location-choices-drive-latest-starbucks-surge/)  
19 [drive-latest-starbucks-surge/](http://www.sitetechnologies.com/data-driven-location-choices-drive-latest-starbucks-surge/) (highlighting value of “the demography, the data, the science” in site  
20 selection and new store openings). Some businesses, for instance, rely on Census data to place their  
21 brick-and-mortar locations in areas where customers are most likely to visit a store in person (as  
22 opposed to shop online). *See* Tom Foster, *Warby Parker Grew to \$250 Million in Sales Through*  
23 *Disciplined Growth. Now It’s Time to Get Aggressive*, Inc. (June 2017),  
24 <https://www.inc.com/magazine/201706/tom-foster/warby-parker-eyewear.html>. Indeed, some  
25 companies offer business analytics solutions based, in part, on Census data to assist with these  
26 location decisions. *Census and ACS*, Esri Demographics, [https://doc.arcgis.com/en/esri-](https://doc.arcgis.com/en/esri-demographics/data/census-acs.htm)  
27 [demographics/data/census-acs.htm](https://doc.arcgis.com/en/esri-demographics/data/census-acs.htm). Without accurate Census data on which to base location  
28 decisions, businesses would lose a tool that has become crucial to their survival and growth.

1 The effects of inaccurate Census data on a business’s decision as to where to place a new  
2 location would not only harm that business but also its surrounding community. For example,  
3 healthcare providers use Census data to understand community needs. *See* National Research  
4 Council, *Modernizing the U.S. Census* 297 (1995). A hospital can use Census data for residents in  
5 the area of a new location to determine how many and what kind of doctors will likely be needed at  
6 that location. *See id.* This same analysis can be performed to determine the need for certain health  
7 services, like obstetrical or family practice services, in a given area. *See id.* at 298. Inaccurate census  
8 data thus may lead to some communities having inadequate healthcare in light of business decisions  
9 driven by this data, just as other communities may face an inefficient influx of healthcare resources  
10 beyond what is actually needed. These important healthcare decisions affect members of the  
11 community, and depend on accurate Census data.

12 With a Census whose accuracy is impaired by the Citizenship Question, businesses will have  
13 less ability to design and build stores and service locations that meet the needs of local communities.  
14 Businesses, their customers, and the communities they serve will all suffer.

15 **2. The Citizenship Question And Its Concomitant Reduction In Census Response**  
16 **Rates Will Harm Businesses That Use Census Data In Product Development,**  
**Marketing, And Placement**

17 Inaccurate Census data will also affect the development and marketing of numerous products  
18 around the country. Businesses use Census data to inform decisions about product development and  
19 placement. A retail business may, for instance, rely on demographic data to determine which  
20 products are going to sell best in which regions, and calibrate each store’s stock accordingly. *See*  
21 Diane W. Schanzenbach & Michael R. Strain, *Act Now to Save the 2020 Census*, Bloomberg Opinion  
22 (Aug. 11, 2017), [https://www.bloomberg.com/view/articles/2017-08-11/act-now-to-save-the-2020-](https://www.bloomberg.com/view/articles/2017-08-11/act-now-to-save-the-2020-census)  
23 [census](https://www.bloomberg.com/view/articles/2017-08-11/act-now-to-save-the-2020-census) (“If you walk into a Target store in suburban Florida, the items on the shelves are different  
24 from what is in a Target store in downtown Washington D.C. Target makes these decisions in large  
25 part using government data.”). Entire product lines may even be developed based on data culled  
26 from the Census. *See, e.g., The Use of Census Data: An Analytical Review, supra* (noting that  
27 accurate Census data helps “[m]anufacturers of baby products such as baby food, clothes, diapers,  
28

1 and toys, and manufacturers of maternity clothes and greeting cards . . . develop . . . their product  
2 lines”).).

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 customers 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.  
7 Cable television companies may use Census data to target advertising for pay-per-view events to  
8 those areas whose residents are most likely to purchase the event. *See id.* at 296. And when a car  
9 manufacturer learned through customer research that its vehicles were popular with people in the  
10 nursing profession, it used data from the Census to tailor its regional advertising to that demographic.  
11 *See Kysar, supra*, at 885. Inaccurate Census data would weaken the ability of businesses to adapt  
12 their marketing and outreach strategies to a changing population, resulting in wasted dollars for  
13 businesses and unwanted advertising for customers.

14 Product design, placement, and marketing are essential aspects of any business, and each  
15 phase can rely on—and many businesses do rely on—accurate Census data.

### 16 **3. Inaccurate Census Data Will Impair The Ability Of Businesses To Make** 17 **Informed Judgments About Eligibility For Federal Support**

18 Inaccurate Census data threatens to harm businesses that use such data to evaluate their  
19 eligibility for certain federal support. For example, under the New Market Tax Credit (“NMTC”)—a  
20 federal program designed to stimulate investment in distressed communities—an investment may  
21 qualify for special tax treatment if it occurs in an area with certain concentrations of low- or  
22 moderate-income households. *See New Markets Tax Credit Program, Community Development*  
23 *Financial Institutions*, [https://www.cdfifund.gov/programs-training/Programs/new-markets-tax-](https://www.cdfifund.gov/programs-training/Programs/new-markets-tax-credit/Pages/default.aspx)  
24 *credit/Pages/default.aspx*; Robert Shapiro, *The 2020 Census May Be Wildly Inaccurate—And It*  
25 *Matters More Than You Think*, Brookings Inst. (Aug. 31, 2017),  
26 <https://www.brookings.edu/blog/fixgov/2017/08/31/the-2020-census-may-be-wildly-inaccurate-and->  
27  
28

1 it-matters-more-than-you-think/.<sup>1</sup> Or a nonprofit organization, such as a rural health clinic, may use  
 2 Census data for a special federal designation based on location and population served. *See*  
 3 *Modernizing the U.S. Census, supra*, at 298. But miscalculating whether a community has a certain  
 4 economic demographic means that a business may well miscalculate its investment’s tax treatment,  
 5 and may miscalculate its estimated bottom line. If margins are tight, inaccurate Census data and its  
 6 effect on tax treatment could be the difference between a new business that survives and one that  
 7 falters.

#### 8 **4. Inaccurate Census Data Will Harm Businesses That Rely On Proportionate** 9 **Allocations Of Federal Funding**

10 Finally, the federal government relies on Census data to allocate and distribute federal  
 11 funding—to the tune of about \$700 billion—and where inaccurate Census data threatens the proper  
 12 allocation of federal funds, it also affects businesses that rely directly or indirectly on those funds.  
 13 *See* A.R.8375, Public Comment – Coalition of Philanthropic Organizations (Mar. 21, 2018)  
 14 (“[R]ecent decennial censuses have resulted in net undercounts of many communities, with  
 15 consequences for . . . disbursing roughly \$700 billion in federal funds.”). In 2015 alone, the federal  
 16 government used Census data to distribute over \$675 billion in federal funding to a variety of  
 17 programs. *See* Marisa Hotchkiss & Jessica Phelan, *Uses of Census Bureau Data in Federal Funds*  
 18 *Distribution: A New Design for the 21st Century* 3 (Sept. 2017) (on file with the U.S. Census  
 19 Bureau); *see also Wisconsin*, 517 at 5–6 (“Today, census data also have important consequences not  
 20 delineated in the Constitution: The Federal Government considers census data in dispensing funds  
 21 through federal programs to the States . . . .”); *see also Dep’t of Commerce*, 315 F. Supp. 3d at 782–  
 22 83. Those billions of dollars were funneled through 132 different programs, ranging from subsidies  
 23 for school lunches to historic preservation. *See* Hotchkiss & Phelan, *supra*, at 16–17.

24 The bulk of Census-guided federal assistance goes to state governments through a handful of  
 25 grant programs that aid low-income households and support highway infrastructure. *See* Andrew D.

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26  
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 28 <sup>1</sup> An NMTC-eligible investment must be located in a designated “low-income community,” 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 Reamer, *Counting for Dollars: The Role of the Decennial Census in the Geographic Distribution of*  
2 *Federal Funds* 10, Brookings Inst. (Mar. 9, 2010), [https://www.brookings.edu/wp-](https://www.brookings.edu/wp-content/uploads/2016/06/0309_census_report.pdf)  
3 [content/uploads/2016/06/0309\\_census\\_report.pdf](https://www.brookings.edu/wp-content/uploads/2016/06/0309_census_report.pdf). In 2008, using Census data, the federal  
4 government distributed over \$36 billion in federal funds via the Federal-Aid Highway Program, and  
5 distributed an additional \$10 billion to fund other transportation needs. *See id.* at 11–12. Businesses  
6 have an interest in ensuring that the basic infrastructure of their communities—including the  
7 availability of accessible and well-kept highways—is supported by federal funding. And an  
8 inaccurate Census threatens the proper allocation of that funding.

9       Businesses also have an interest in the federal funding allocated to various programs. For  
10 example, through the Workforce Innovation and Opportunity Act (“WIOA”), the federal government  
11 subsidizes the education and workforce training of youths and adults from disadvantaged  
12 backgrounds and areas. *See* 29 U.S.C. §§ 3162, 3172. The allocation of those subsidies is  
13 determined using the “most recent satisfactory data from the Bureau of the Census.” 29 U.S.C. §  
14 3242(a). Some organizations, like *amicus curiae* General Assembly, enroll students that rely entirely  
15 on that federal funding, or operate in cities that are fully funded by WIOA. And the Department of  
16 Labor allocated over \$7 billion in 2008 on the basis of Census data, *see* Reamer, *supra*, at 13, some  
17 of which went to educational institutions like General Assembly providing free training programs to  
18 underserved and overlooked talent.

19       Companies may have more specific interests depending on their size or line-of-business. For  
20 example, many new businesses have an interest in the federal funding that goes to Small Business  
21 Development Centers, which receive federal funding to provide small businesses and entrepreneurs  
22 with free consulting and training services. *See Small Business Development Center*, U.S. Small  
23 Business Administration, <https://www.sba.gov/tools/local-assistance/sbdc>. A local outdoors-  
24 equipment retail store, whose business depends in part on the availability and quality of nearby  
25 outdoor activities, will likely have an interest in ensuring that the surrounding community is receiving  
26  
27  
28

1 adequate support from federal programs such as the Wildlife Restoration Program<sup>2</sup> and the Water  
2 Pollution Control Grant Program,<sup>3</sup> both of which rely on the Census to determine allocation of  
3 funding.

4 Businesses with deep roots in particular communities may also have a more general interest in  
5 ensuring that the communities they serve—and that make up their customer and employee bases—are  
6 receiving the needed federal assistance to which they are entitled. The U.S. Department of  
7 Education, for instance, relies on Census data to allocate funds to educational agencies and schools  
8 with high numbers or percentages of children from low-income families.<sup>4</sup> The Department of  
9 Education allocated over \$10 billion in special education grants to states in 2008, based in large part  
10 on Census data. *See* Reamer, *supra*, at 11. It distributed over \$7 billion in Title I grants to local  
11 educational agencies during the same time period. *Id.* Businesses in such a community, like all  
12 members of a community, benefit from strong educational programs. Federal funds are also allocated  
13 through Community Development Block Grant Programs—again on the basis of Census data—to  
14 help develop urban communities and improve living and economic conditions.<sup>5</sup> Again, businesses  
15 benefit when their communities receive the infrastructure support they need to thrive. But an  
16 inaccurate Census risks misallocating funds to each of these programs, harming businesses and their  
17 communities.

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22 <sup>2</sup> *See Wildlife Restoration Program – Overview*, U.S. Fish & Wildlife Serv.,  
23 <https://wsfrprograms.fws.gov/subpages/grantprograms/wr/wr.htm> (providing funding to restore, conserve, manage, and  
24 enhance wild birds and mammals and their habitat); *see also State Wildlife Grant Program – Overview*, U.S. Fish &  
Wildlife Serv., <https://wsfrprograms.fws.gov/subpages/grantprograms/swg/swg.htm> (providing funding to develop and  
implement programs that benefit wildlife and their habitats).

25 <sup>3</sup> *See Learn About the Water Pollution Control (Section 106) Grant Program*, U.S. Env'tl. Prot. Agency,  
26 <https://www.epa.gov/water-pollution-control-section-106-grants/learn-about-water-pollution-control-section-106-grant>  
(providing funding to states and agencies to build and sustain effective water quality programs).

27 <sup>4</sup> *See Improving Basic Programs Operated by Local Educational Agencies (Title I, Part A)*, U.S. Dep't of Educ.,  
<https://www2.ed.gov/programs/titleiparta/index.html?exp=0>.

28 <sup>5</sup> *See CDBG: Community Development Block Grant Programs*, HUD Exchange,  
<https://www.hudexchange.info/programs/cdbg/>; *see also Dep't of Commerce*, 315 F. Supp. 3d at 782–83.

1           These varied and documented uses of Census data are possible only because businesses can  
2 depend on the Census to provide accurate demographic information about customers. The  
3 Citizenship Question, however, threatens to undermine that reliability of Census data and therefore  
4 substantially reduce its value to businesses. If businesses cannot rely on the Census to provide  
5 usable, accurate data, they will be hamstrung in their ability to track and adapt to customers'  
6 changing needs and preferences. Competitive businesses must always be evolving to respond to  
7 changes in the market, and the Citizenship Question will impede their ability to do so.

8       **C.     Inaccurate Census Data Will Impact Businesses More Substantially As Businesses  
9           Become Increasingly Data-Driven**

10           Inaccurate Census data would be more disruptive to businesses now than ever before.  
11 Businesses are relying more and more on data-driven analytics to plan their operations and reach  
12 customers in the most efficient ways possible. Census data has been, and will continue to be, integral  
13 to this change, rendering an accurate Census imperative to business growth and innovation in this  
14 country. See AJ Agrawal, *Why Data Is Important for Companies and Why Innovation Is On the Way*,  
15 Inc.com (Mar. 24, 2016), <https://www.inc.com/aj-agrawal/why-data-is-important-for-companies-and-why-innovation-is-on-the-way.html> (asserting that in an era in which “[p]eople are generating more  
16 [data] than ever before,” this data is becoming “essential for companies and it’s going to spell an era  
17 of innovation”).  
18

19           And not only have businesses begun focusing data to drive their operations, but also entire  
20 businesses have sprung up around processing, analyzing, and advising consumers based on available  
21 data—including that provided in the Census. For instance, numerous businesses have developed  
22 commercial databases that contain information gathered about their customers and target audience.  
23 But in order to make use of these commercial databases—whether, for instance, in an effort to  
24 understand and cater to the preferences of a local market segment, or to understand the national  
25 population at large—businesses need what are called “truth sets.” These are sets of data that serve as  
26 benchmarks to evaluate the quality of the data contained in the commercial database, and to provide a  
27 basis for statistical adjustments. The information that the Census generates “usually provide[s] a  
28

1 definitive benchmark.” Scott McDonald, *A 2020 Census Flop Would Pose a Danger to U.S.*  
2 *Businesses*, Forbes (Dec. 6, 2017).

3 Some companies, like location intelligence providers, repurpose Census data to provide  
4 insights to customers and to help them draw better, data-driven inferences about how to run their  
5 organizations. See Greg Sterling, *Chipotle Customers Are Smarter Than McDonald’s And Other*  
6 *Insights From Smartphone Data*, (June 24, 2014), [https://marketingland.com/chipotle-customers-](https://marketingland.com/chipotle-customers-smarter-mcdonalds-insights-smartphone-data-88637)  
7 [smarter-mcdonalds-insights-smartphone-data-88637](https://marketingland.com/chipotle-customers-smarter-mcdonalds-insights-smartphone-data-88637). Real estate aggregators can use Census data to  
8 compile its listings and real estate estimates. *Zillow: Ahead of Its Time or Falling Behind*, Harvard  
9 Business School: Open Knowledge by Digital Initiative (Nov. 18, 2016),  
10 <https://rctom.hbs.org/submission/zillow-ahead-of-its-time-or-falling-behind/>; see also *Census Data*  
11 *Trends*, Zillow Blogs (Sept. 13, 2006), <https://www.zillow.com/blog/census-data-trends-3888/>.  
12 Businesses like these might not exist without the internet and advanced data processing. And among  
13 the information these businesses process is Census data, the accuracy of which is and will continue to  
14 be essential to the existence of these businesses. Indeed, the fact that these businesses exist in the  
15 first place is a testament to just how important Census data and information like it has become to the  
16 business world.

17 Although it is impossible to determine how innovators and entrepreneurs will use Census data  
18 in the future, one thing is clear: businesses will keep using it so long as it is accurate. They will seek  
19 to leverage key data and determine new, profitable uses to draw from it. Ensuring the accuracy of  
20 this data is essential, and any attempt by the federal government to diminish the Census data threatens  
21 businesses and economic growth nationwide.

#### 22 IV. CONCLUSION

23 For the reasons stated above, *amici* support judgment in favor of Plaintiffs.  
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Respectfully submitted,

2 /s/ Julian W. Kleinbrodt  
3 Julian W. Kleinbrodt (CA Bar # 302085)  
4 jkleinbrodt@gibsondunn.com  
5 GIBSON, DUNN & CRUTCHER LLP  
6 555 Mission Street, Suite 3000  
7 San Francisco, CA 94105-0921  
8 Tel.: 415-393-8382  
9 Fax: 415-374-8470

10 Stuart F. Delery (*pro hac vice* pending)  
11 sdelery@gibsondunn.com  
12 GIBSON, DUNN & CRUTCHER LLP  
13 1050 Connecticut Avenue, N.W.  
14 Washington, DC 20036-5306  
15 Tel.: 202-887-3650  
16 Fax: 202-467-0539

17 Alexander H. Southwell (*pro hac vice* pending)  
18 asouthwell@gibsondunn.com  
19 GIBSON, DUNN & CRUTCHER LLP  
20 200 Park Avenue  
21 New York, NY 10166-0193  
22 Tel.: 212-351-3981  
23 Fax: 212-351-6281

24 *Attorneys for Proposed Amici Curiae*  
25 Tech:NYC, Univision Communications Inc.,  
26 General Assembly, Topia, and the Minneapolis  
27 Regional Chamber of Commerce  
28