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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT**

NATIONAL ASSOCIATION FOR THE )  
ADVANCEMENT OF COLORED )  
PEOPLE, NAACP CONNECTICUT )  
STATE CONFERENCE, and NAACP )  
BOSTON BRANCH, )

Plaintiffs, )

v. )

U.S. DEPARTMENT OF COMMERCE, )

Defendant. )  
\_\_\_\_\_)

Civil Action No. 3:17-CV-1682 (WWE)

December 14, 2017

**DEFENDANT’S ANSWER TO COMPLAINT AND AFFIRMATIVE DEFENSES**

Defendant United States Department of Commerce (DOC) hereby answers Plaintiffs National Association for the Advancement of Colored People (NAACP), NAACP Connecticut State Conference (NAACP Conn.), and NAACP Boston Branch (NAACP Boston) Complaint, ECF No. 1, as follows:

Plaintiffs’ introduction contains Plaintiffs’ characterization of the decennial census and this action, to which no response is required.

**JURISDICTION AND VENUE**

1. This paragraph contains Plaintiffs’ allegations as to jurisdiction that raise a question of law for the Court, to which no response is required. To the extent that a response is required, Defendant admits that this Court has jurisdiction over proper FOIA actions.

2. This paragraph contains Plaintiffs' allegations as to venue that raise a question of law for the Court, to which no response is required. To the extent a response may be deemed required, Defendants admit that venue is proper in this District for proper FOIA actions.

### **PARTIES**

3. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

4. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

5. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

6. Defendant admits that DOC is a federal agency, that the Census Bureau is a component of DOC, and that the Census Bureau conducts the decennial census. Defendant admits that DOC has records responsive to Plaintiffs' FOIA request at issue in this complaint.

### **FACTUAL ALLEGATIONS**

7. The allegations in this paragraph consist of Plaintiffs' characterizations of the decennial census and the constitutional mandate for it, to which no response is required, as none of the allegations in this paragraph are relevant to the resolution of the cause of action set forth in the complaint.

8. The allegations in this paragraph consist of Plaintiffs' characterizations of how the decennial census is used, to which no response is required, as none of the allegations in this paragraph are relevant to the resolution of the cause of action set forth in the complaint.

9. The allegations in this paragraph consist of Plaintiffs' characterizations of how the decennial census is used, to which no response is required, as none of the allegations in this paragraph are relevant to the resolution of the cause of action set forth in the complaint.

10. The allegations in this paragraph consist of Plaintiffs' characterizations of public interest in the decennial census, participation levels required of the decennial census, the public's reliance upon the government for certain information about the decennial census and the reasons for that reliance, and the extent of personal information sought by the decennial census, to which no response is required, as none of the allegations in this paragraph are relevant to the resolution of the cause of action set forth in the complaint. To the extent that the allegations relate to the 2020 Decennial Census, it should be noted that it has not yet been completed.

11. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph. However, none of the allegations in this paragraph are relevant to the resolution of the cause of action set forth in the complaint.

12. The allegations in this paragraph consist of Plaintiffs' characterizations of undercounting of certain populations in the decennial census enumerations of prior decades, to which no response is required, as none of the allegations in this paragraph are relevant to the resolution of the cause of action set forth in the complaint.

13. The allegations in this paragraph consist of Plaintiffs' characterizations of the causation of undercounting of certain populations in the decennial census enumerations, to which no response is required, as none of the allegations in this paragraph are relevant to the resolution of the cause of action set forth in the complaint.

14. The allegations in this paragraph consist of Plaintiffs' characterizations of the causation of undercounting of certain populations in the decennial census enumerations, to which

no response is required, as none of the allegations in this paragraph are relevant to the resolution of the cause of action set forth in the complaint.

15. The allegations in this paragraph consist of Plaintiffs' characterizations of the causation of undercounting of certain populations in the decennial census enumerations, to which no response is required, as none of the allegations in this paragraph are relevant to the resolution of the cause of action set forth in the complaint.

16. The allegations in this paragraph consist of Plaintiffs' characterizations of the causation of undercounting of certain populations in the decennial census enumerations, to which no response is required, as none of the allegations in this paragraph are relevant to the resolution of the cause of action set forth in the complaint.

17. The allegations in this paragraph consist of Plaintiffs' characterizations of partnerships of the Census Bureau for decennial census enumerations of the past and the reasons for the partnerships, to which no response is required, as none of the allegations in this paragraph are relevant to the resolution of the cause of action set forth in the complaint.

18. The allegations in this paragraph consist of Plaintiffs' characterizations of partnerships of the Census Bureau for decennial census enumerations of the past and the reasons for the partnerships, to which no response is required, as none of the allegations in this paragraph are relevant to the resolution of the cause of action set forth in the complaint.

19. The allegations in the first sentence of this paragraph consist of Plaintiffs' characterizations of the role transparency plays in the accuracy and fairness of the decennial census, and makes an unclear reference to the reasons why the alleged dependence on transparency for accuracy and fairness to occur has always existed. The allegations in the second sentence also rest upon an unclear reason, and Defendant lacks knowledge or information

sufficient to form a belief as to the truth of the allegations of the second sentence of this paragraph. However, none of the allegations in this paragraph are relevant to the resolution of the cause of action set forth in the complaint.

20. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph. However, none of the allegations in this paragraph are relevant to the resolution of the cause of action set forth in the complaint.

21. The allegations in this paragraph consist of Plaintiffs' characterizations of a GAO report. Defendant respectfully refers the Court to that report for a full description of its contents. However, none of the allegations in this paragraph are relevant to the resolution of the cause of action set forth in the complaint.

22. The allegations in this paragraph consist of Plaintiffs' characterizations of the adequacy of information made public by the Defendant, to which no response is required.

23. The allegations in this paragraph consist of Plaintiffs' characterizations of the adequacy of information made public by the Defendant, to which no response is required.

24. The allegations in this paragraph consist of Plaintiffs' characterizations of a Federal Register notice. Defendant respectfully refers the Court to that notice for a full description of its contents.

25. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph. By way of further explanation, neither the FOIA request nor the agency that provided the information is identified in the allegations.

26. The allegations in this paragraph consist of Plaintiffs' characterizations of an OMB memorandum. Defendant respectfully refers the Court to that memorandum for a full description of its contents.

27. The allegations in the first sentence of this paragraph consist of Plaintiffs' characterizations of an OMB memorandum. Defendant respectfully refers the Court to that memorandum for a full description of its contents. Defendant lacks knowledge or information sufficient to form a belief as to the Plaintiffs' knowledge alleged in the second sentence of this paragraph.

28. Defendant denies the allegations in the first sentence of this paragraph. Defendant specifically denies the allegations that Census Director John Thompson resigned his position, but admits that he retired on May 8, 2017.

29. The allegations in this paragraph consist of Plaintiffs' characterizations of public knowledge of the impact of executive orders, to which no response is required.

30. The allegations in this paragraph consist of Plaintiffs' characterizations of the adequacy of information made public by the Defendant, to which no response is required.

31. The allegations in this paragraph consist of Plaintiffs' characterizations of funding for the Census Bureau, the Census Bureau's IT spending, and decennial census-related activities, to which no response is required.

32. The allegations in this paragraph consist of Plaintiffs' characterizations of the proposed budget for the Census Bureau, to which no response is required.

33. The allegations in this paragraph consist of Plaintiffs' characterizations of Congressional testimony. Defendant respectfully refers the Court to that testimony for a full description of its contents.

34. The allegations in this paragraph consist of Plaintiffs' characterizations of Defendant's potential cutbacks to address budget difficulties, to which no response is required.

35. Defendant lacks knowledge or information sufficient to form a belief as to the Plaintiffs' knowledge alleged in this paragraph.

36. The allegations in this paragraph consist of Plaintiffs' characterizations of changes in the 2020 census compared to prior decennial census enumerations, to which no response is required.

37. The allegations in this paragraph consist of Plaintiffs' characterizations of demographic characteristics, to which no response is required.

38. The allegations in this paragraph consist of Plaintiffs' characterizations of how transparent certain plans of the Census Bureau should be, to which no response is required.

39. Defendant denies the allegations contained in this paragraph.

**Plaintiffs' FOIA Request to the U.S. Department of Commerce, Census Bureau**

40. Admit that on July 6, 2017, Defendant received a FOIA request on behalf of the Plaintiffs.

41. The allegations in this paragraph consist of Plaintiffs' characterizations of their request. Defendant respectfully refers the Court to the request for a full description of its contents.

42. The allegations in this paragraph consist of Plaintiffs' characterizations of their request. Defendant respectfully refers the Court to the request for a full description of its contents.

43. Defendant admits that on July 14, 2017, Census Bureau sent an Interim Fee Waiver Denial to counsel for Plaintiffs.

44. Admit.

45. Admit.

46. Defendant admits that Interim Fee Waiver Denial asserted that the request was received on July 6, 2017. Defendant lacks knowledge or information sufficient to form a belief as to the truth of how and when Plaintiffs sent its request.

47. The allegations in this paragraph consist of legal conclusions, to which no response is required.

48. Defendant lacks knowledge or information sufficient to form a belief as to the truth of how and when Plaintiffs sent its request. Defendant admits that the request was received on July 6, 2017, and was considered perfected on July 10, 2017, two business days later.

49. The allegations in this paragraph consist of legal conclusions, to which no response is required.

50. Defendant admits that on August 4, 2017, Census Bureau sent an Interim Extension to counsel for the Plaintiffs.

51. The allegations in this paragraph consist of Plaintiffs' characterizations of a letter. Defendant respectfully refers the Court to the letter for a full description of its contents.

52. Admit. The letter appears to have incorrectly reference 15 C.F.R. § 4.6(d)(2) as 15 C.F.R. § 4.6(c)(2). Defendant regrets the error.

53. Deny that the clock started before July 10, 2017. Deny that August 4, 2017, is outside of 20 business days from July 10, 2017. Dispute the characterization that Census Bureau's prediction of an achievable response date was a grant to itself of a 30-day extension.

54. Dispute the characterization that Census Bureau's prediction of an achievable response date was a grant to itself of a 30-day extension.



55. Admit that on August 21, 2017, Defendant received the same appeal by fax and email from counsel for Plaintiffs. Admit that on August 22, 2017, Defendant received the same appeal by a mail sent through Federal Express.

56. The allegations in this paragraph consist of Plaintiffs' characterizations of its appeal. Defendant respectfully refers the Court to the appeal for a full description of its contents. Deny that Census Bureau acknowledged receipt of the appeal, but admit that an automated acknowledgement was sent by FOIAOnline on August 22, 2017, and a personalized email acknowledgement sent by DOC on August 23, 2017.

57. Admit that on August 30, 2017, Census Bureau sent an Interim Response to counsel for Plaintiffs.

58. The allegations in this paragraph consist of Plaintiffs' characterizations of a letter. Defendant respectfully refers the Court to the letter for a full description of its contents.

59. Admit that on September 8, 2017, Census Bureau received a letter from Plaintiffs.

60. The allegations in this paragraph consist of Plaintiffs' characterizations of a letter. Defendant respectfully refers the Court to the letter for a full description of its contents.

61. The allegations in this paragraph consist of Plaintiffs' characterizations of a letter. Defendant respectfully refers the Court to the letter for a full description of its contents.

62. The allegations in this paragraph consist of Plaintiffs' characterizations of a letter. Defendant respectfully refers the Court to the letter for a full description of its contents.

63. The allegations in this paragraph consist of legal conclusions, to which no response is required.

64. Admit that on October 3, 2017, Census Bureau sent counsel for Plaintiffs an Interim Response. The remainder of the allegations in this paragraph consist of Plaintiffs'

characterizations of a letter. Defendant respectfully refers the Court to the letter for a full description of its contents.

65. The allegations in this paragraph consist of legal conclusions, to which no response is required.

66. Admit that on October 4, 2017, Counsel for Plaintiffs and FOIA officers from Census Bureau had a telephone discussion.

67. Admit that Census Bureau decided to grant a fee waiver to Plaintiffs.

68. Dispute the characterization that Census Bureau's prediction of an achievable response date was a grant to itself of an extension. Deny that, as of the date of this response, that Plaintiffs have received incomplete responses to any item.

69. The allegations in this paragraph consist of legal conclusions, to which no response is required. Deny that, as of the date of this response, that Plaintiffs have not received responses to any item.

70. The allegations in this paragraph consist of legal conclusions, to which no response is required.

### **CAUSE OF ACTION**

71. Defendant repeat all of the above paragraphs.

72. The allegations in this paragraph contain conclusions of law, to which no response is required.

73. Defendant admits it has documents responsive to the FOIA request at issue in this complaint.

74. The allegations in this paragraph contain conclusions of law, to which no response is required.

75. The allegations in this paragraph contain conclusions of law, to which no response is required.

76. The allegations in this paragraph contain conclusions of law, to which no response is required.

77. The allegations in this paragraph contain conclusions of law, to which no response is required.

The remaining paragraphs of the Complaint consist of Plaintiff's prayer for relief to which no response is required. To the extent that a response may be deemed required, Defendant denies that Plaintiff is entitled to any of the relief requested, or to any relief whatsoever.

Defendant hereby denies each allegation in the Complaint not expressly admitted or qualified above.

### **AFFIRMATIVE DEFENSES**

Defendant reserves the right to amend, alter and supplement the defenses contained in this Answer as the facts and circumstances giving rise to this Complaint become known to Defendant through the course of this litigation.

#### **First Affirmative Defense**

The Complaint fails to state a claim upon which relief can be granted.

#### **Second Affirmative Defense**

Certain records sought by Plaintiffs are exempt from release in full under one or more exemptions of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as amended.

#### **Third Affirmative Defense**

The complaint is moot, as all non-exempt responsive records have been disclosed to Plaintiffs.

Wherefore, Defendant prays that this Court dismiss the Complaint with prejudice, at Plaintiffs' cost, and that the Court grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

JOHN H. DURHAM  
UNITED STATES ATTORNEY

*/s/ Brenda M. Green*

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CERTIFICATE OF SERVICE

I hereby certify that on December 14, 2017, the foregoing was filed electronically and served by mail upon anyone unable to accept electronic filing. Notice of this filing will be sent via e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF System.

/s/ Brenda M. Green  
BRENDA M. GREEN