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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

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; and U.S. CENSUS BUREAU,

Defendants.

Case No. 20-cv-5799-LHK

**BRIEF OF *AMICI CURIAE* COUNTY OF
SANTA CLARA AND 19 ADDITIONAL
LOCAL GOVERNMENTS AND
OFFICIALS IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Hearing Date: September 17, 2020
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Courtroom 8 – 4th Floor
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390 U.S. 474 (1968) 11

Brown v. Thomson,
462 U.S. 835 (1983) 11

City of San Jose v. Trump,
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Dep’t of Commerce v. New York,
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Evenwel v. Abbott,
136 S. Ct. 1120 (2016) 11, 12

Reynolds v. Sims,
377 U.S. 533 (1964) 11, 12

State of California v. Trump,
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Utah v. Evans,
536 U.S. 452 (2002) 12, 17

Wisconsin v. City of New York,
517 U.S. 1, 20 (1996) 17

Other Authorities

A. Wolkin et al.,
Reducing Public Health Risk During Disasters: Identifying Social Vulnerabilities, 12 J.
Homeland Sec. & Emergency Mgmt. 809–822 (Dec. 2015) 7

America Counts Staff,
From COVID-19 to Hurricanes, Census Surveys Help Areas Prepare and Recover, U.S.
Census Bureau (Apr. 9, 2020) 6

B. Flanagan et al.,
A Social Vulnerability Index for Disaster Management, 8(1) J. Homeland Sec. &
Emergency Mgmt. art. 3, at 3 (2011) 5, 6

California Census Office,
Census 2020 California Hard-to-Count Fact Sheet: Santa Clara County..... 15

California Census Office,
Census 2020 California Hard-To-Count Fact Sheet: Stockton City 15

Centers for Disease Control,
CDC’s Social Vulnerability Index Fact Sheet (Sept. 10, 2018) 5

County of Santa Clara District Attorney’s Office,
Race and Prosecutions: 2018 Update at 1 8

County of Santa Clara Housing Element Update
2015-2022, at 58 (June 10, 2014)..... 8

County of Santa Clara Public Health Department,
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LAUSD,
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Leonardo Castañeda and David Debolt,
Death reports show coronavirus hits San Jose’s poor, Latino neighborhoods hardest, San
Jose Mercury News (May 10, 2020) 15

1 Los Angeles Unified School District,
 2 2018 Developer Fee Justification Study (Mar. 2018) 8
 3 M. Hotchkiss & J. Phelan,
 4 *U.S. Census Bureau, Uses of Census Bureau Data in Federal Funds Distribution* at 8
 5 (Sept. 2017) 9
 6 Migration Policy Institute,
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 8 New Americans in Portland, OR,
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 14 NYC Dep’t of City Planning,
 15 *Weekly Reports on NYC 2020 Census Self-Response* 15
 16 NYC Mayor’s Office of Immigrant Affairs,
 17 *State of Our Immigrant City: 2019*..... 3
 18 Portland Housing Bureau,
 19 *State of Housing in Portland* (2019) 8
 20 Rich Ibarra,
 21 *Stockton Named the Most Racially Diverse City in America*, Capital Public Radio (Jan. 28,
 22 2020)..... 3
 23 Salvo, J.,
 24 “Establishing Priorities for the Privacy Budget: The Case for Good Age Data, Emergency
 25 Preparedness and the 2010 Census Demonstration Product,” Presentation at the National
 26 Academy of Sciences Workshop on 2020 Census Data Products: Data Needs and Privacy
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 28 Santa Clara County Community Wildfire Plan
 at 81 (Aug. 2016)..... 6
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 2010 Census Match Study, U.S. Census Bureau at 47 (Nov. 16, 2012) 16
 Thomas Mule, U.S. Census Bureau,
 DSSD 2010 Census Coverage Measurement Memorandum Series 2010-G-01 at 30, Table
 21 (May 22, 2012) 16
 U.S. Census Bureau QuickFacts:
 Dallas, Texas 3
 U.S. Census Bureau,
 2020 Census Operational Plan, at 212 (Dec. 2018)..... 12
 U.S. Census Bureau,
 QuickFacts: Santa Clara County, California 2
 U.S. Census Bureau,
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 U.S. Dep’t of Ag.,
About WIC-How WIC Helps (Nov. 18, 2013) 9

INTEREST OF AMICI CURIAE¹

Amici Curiae are diverse local jurisdictions that collectively represent more than 25 million residents.² For at least a decade, Amici will be profoundly and negatively affected by the differential undercount and compromised data quality resulting from the decision by the Department of Commerce and Census Bureau (“Defendants”) to cut short 2020 Census operations. As Plaintiffs discuss in their Complaint and Motion for Preliminary Injunction, the results of the current census will be used to assign political representatives and will dictate the allocation of federal funding to state and local governments. Amici submit this brief both to highlight local governments’ interests in such matters and to show that their interests in complete and accurate census data extend well beyond those matters.

Amici rely on accurate decennial census data to perform a range of critical government functions. Like local governments across this country, Amici have sole or primary responsibility for protecting the public health and safety of their residents. Local governments plan for and respond in disaster and emergency situations; operate safety-net healthcare facilities; monitor, identify, and respond to emerging epidemics; provide vaccinations, nutrition, substance abuse treatment, and mental health services; investigate and prosecute crime; and perform many other basic governmental functions critical to the safety and well-being of the entire population.

Census data underpins many of these functions. From responding to the COVID-19 pandemic and determining where to send first responders during wildfire and hurricane evacuations, to deciding where to build schools and locate services for the elderly, accurate census data is the cornerstone of planning and operations that both shape our communities’ day-to-day experiences and save lives in crises. In addition, local governments rely on census-based federal

¹ The Court granted leave to file amicus briefs on August 26, 2020. ECF No. 45.

² Amici are: the County of Santa Clara, CA; the County of Marin, CA; the County of Monterey, CA; the County of San Mateo, CA; Cook County, IL; the County of Bucks, PA; the County of Delaware, PA; the County of Montgomery, PA; the City of Oakland, CA; the City of Sacramento, CA; the City of Santa Cruz, CA; the City of Boston, MA; the City of Baltimore, MD; the City of New York, NY; the City of Portland, OR; the City of Austin, TX; the City of Dallas, TX; the City of Seattle, WA; the Los Angeles Unified School District; and City of Stockton, CA Mayor Michael Tubbs.

1 funding streams to provide many essential services, from assistance to crime victims to foster care
2 and nutritional support for low-income children. Census data also forms the basis for not just
3 federal but also state and local redistricting, including in many of Amici’s jurisdictions, and
4 accurate data is essential to ensuring that government is truly representative.

5 Defendants’ August 3, 2020 decision to cut short 2020 Census operations in the midst of
6 the COVID-19 pandemic will undermine the census in at least two key ways: first, it will
7 substantially exacerbate the problem of more individuals from hard-to-count groups going
8 uncounted as compared to the general population, i.e., a differential undercount; and second, it will
9 compromise the quality of census data produced about local populations. Among the Census field
10 operations that will be affected by Defendants’ decision is the critical Non-Response Follow Up
11 (“NRFU”) operation, which is specifically designed to enumerate populations that the Census
12 Bureau has long struggled to count—including racial and ethnic minorities, non-English speakers,
13 and undocumented persons. By reducing the time for the Census Bureau to enumerate these
14 individuals in NRFU, Defendants’ decision makes it significantly more likely that members of
15 these communities will go uncounted altogether. And to the extent these populations’ *numbers* are
16 captured through the secondary means available to the Census Bureau, the resulting demographic
17 information about local populations—on which local, state, and federal governments rely to fulfill
18 a wide range of responsibilities—will be of significantly lower quality.

19 Amici face a direct and significant risk that Defendants’ decision will weaken Amici’s
20 public safety and essential service operations because they have substantial populations of hard-to-
21 count communities. For example, almost 40 percent of Santa Clara County’s 1.9 million residents
22 are foreign born. More than 25 percent of its population is Latinx and roughly seven percent is
23 undocumented. Migration Policy Institute, *State and County Estimates of Unauthorized Immigrants*
24 (Sep. 26, 2016), <https://perma.cc/TM4S-SBFS>; U.S. Census Bureau, QuickFacts: Santa Clara
25 County, California, <https://perma.cc/B5KH-2T8L>. The City of New York’s five boroughs are home
26 to 3.1 million immigrants, who make up more than 37 percent of the City’s population. NYC Dep’t
27 of City Planning, American Community Survey Data Demographic Profile and Social Profiles
28

1 (2018), <https://perma.cc/G7XK-DQ43>. An estimated one million New Yorkers share a household
 2 with one or more of the City’s estimated 504,000 undocumented immigrants. NYC Mayor’s Office
 3 of Immigrant Affairs, State of Our Immigrant City: 2019, <https://perma.cc/H8LZ-FCVH>. Likewise,
 4 Stockton, Oakland, and Sacramento are the three most diverse cities in California, and the Los
 5 Angeles Unified School District (LAUSD) serves a population that is over 73 percent Latinx. Rich
 6 Ibarra, *Stockton Named the Most Racially Diverse City in America*, Capital Public Radio (Jan. 28,
 7 2020), <https://perma.cc/3GM3-Q2AH>; LAUSD, Student Demographics,
 8 <https://my.lausd.net/opendata/dashboard>. A quarter of Dallas residents are foreign born, and more
 9 than 40 percent of residents identify as Hispanic or Latinx. U.S. Census Bureau QuickFacts:
 10 Dallas, Texas, <https://perma.cc/TTC9-6KPA>. And in the City of Portland, more than 20 percent of
 11 the immigrant population is undocumented. New Americans in Portland, OR, New American
 12 Economy (2020), <https://perma.cc/FE59-HAUC>.

13 Even before COVID-19, NRFU was especially critical to this year’s census because it is the
 14 Census Bureau’s most effective tool to reach and enumerate the hard-to-count populations most
 15 directly subjected to the climate of fear and distrust created by the Trump Administration’s harsh
 16 immigration policies and previous attempts to politicize the census. The disruption wrought by the
 17 pandemic has made census field operations more time-consuming and challenging, and also made
 18 it even more difficult to reach and enumerate hard-to-count populations. Robust 2020 Census field
 19 operations are therefore critical to ensuring that everyone in Amici’s jurisdictions is accurately
 20 counted, as the Constitution demands, and Amici have a particular interest in the legality of
 21 Defendants’ decision to slash the time allotted to these mission-critical functions.

22 INTRODUCTION & SUMMARY OF ARGUMENT

23 The United States Constitution requires the federal government to count every person in the
 24 country once every decade. This constitutionally mandated decennial census provides the best—
 25 and in many cases, the only—data for governments to understand the size, location, and
 26 composition of their populations. Accurate census data is an irreplaceable and essential foundation
 27 for local governments across the country to perform the vital functions that support, protect, and
 28

1 benefit their residents, including those that protect the most vulnerable members of the community.
 2 Census data informs life-saving public health and safety decisions; drives the allocation of federal
 3 funding for safety-net services and educational programs; and ensures that local and state electoral
 4 districts satisfy residents' basic constitutional right to equal representation. The importance of
 5 ensuring an accurate and complete 2020 Census cannot be overstated.

6 Defendants' decision to cut short the time period for 2020 Census operations is
 7 fundamentally and squarely inconsistent with producing accurate, complete, and high-quality
 8 census data. Even in normal times, such a decision would risk significant inaccuracy. But in the
 9 midst of a global pandemic, and with preexisting distrust and fear of responding in certain
 10 vulnerable communities, slashing the Bureau's essential data collection efforts effectively
 11 guarantees a disproportionate undercount of certain hard-to-count communities as well as
 12 irretrievably inaccurate data about local populations. Because Amici have larger hard-to-count
 13 populations than many other parts of the country, truncated field operations will be especially
 14 damaging to the completeness and accuracy of data about Amici's residents. Accordingly,
 15 Defendants' decision will to an outsize degree hamper—if not altogether prevent—Amici from
 16 effectively conducting essential operations and ensuring their residents equal representation.

17 ARGUMENT

18 I. Accurate Census Data is the Foundation for Critical Government Functions

19 A. Local Governments Depend on Accurate Census Data for Life-Saving Planning 20 and Services

21 Local governments across the country, including Amici, use census data every day
 22 throughout their operations to perform essential functions. By undermining the accuracy of census
 23 data about Amici's residents,³ Defendants' actions will frustrate a variety of critical government
 24 services for many years to come. Among the operations most severely and immediately affected

25 _____
 26 ³ As described in Part II, *infra*, Defendants' decision will likely undermine the accuracy of both the
 27 census count (i.e., the number of people counted) and the demographic characteristics of counted
 28 households (e.g., the race, gender, and age of household members). Local jurisdictions depend on
 accurate enumeration and demographic census data, and inaccuracies as to either will undermine
 governments' ability to provide the critical services described in this Part.

1 will be emergency response and public health functions, where access to accurate data can mean
2 the difference between lives saved and lives lost.

3 Local governments are often on the front lines of emergency preparedness and response.
4 They are responsible for developing advance disaster plans that enable the immediate allocation of
5 resources like first responders, evacuation assistance, and disease control measures—and for
6 implementing those plans during emergencies. For instance, localities across the country, including
7 Amici, have relied on census data to respond to COVID-19. And as each fire season in California
8 brings more, and more intense, wildfires—such as those currently raging across large swaths of
9 Santa Clara and neighboring counties—local governments must be prepared to organize and
10 support evacuations and provide services for those most affected by such catastrophes. The same is
11 true for localities affected by increasingly intense hurricane and tornado seasons. And in disasters
12 of all kinds, local governments must identify vulnerable populations in need of emergency food
13 stamps, temporary housing, and other disaster-related services.

14 None of this is possible without data about local populations. Disaster planning depends on
15 having accurate data reflecting the composition and location of local communities—data that, in
16 Amici’s experience, is reliably produced *only* by the census. Social Vulnerability Indexes (the
17 “Indexes”) illustrate the importance of census data for disaster planning. These Indexes are used by
18 governmental emergency managers at the federal, state, and local levels to identify communities
19 whose members are “more likely to die in a disaster event and less likely to recover after one.” B.
20 Flanagan et al., *A Social Vulnerability Index for Disaster Management*, 8(1) J. Homeland Sec. &
21 Emergency Mgmt. art. 3, at 3 (2011), <https://perma.cc/TXN7-C7V3> (internal quotation marks and
22 citations omitted). They guide resource allocation before and during emergencies to protect those
23 most likely to need government intervention to survive and recover. *Id.*; *see also* Centers for
24 Disease Control, *CDC’s Social Vulnerability Index Fact Sheet* (Sept. 10, 2018), <https://perma.cc/779V-6U7W>;
25 County of Santa Clara Public Health Department, *Social Vulnerability Index*,
26 <https://perma.cc/SV73-TC5R>.

1 The Indexes use census data to identify regions with populations and features that
2 emergency-management research has identified as indicators of increased need. Flanagan, *supra*, at
3 4. These indicators include the presence of the elderly and children, who are vulnerable during a
4 disaster; dense housing; lack of vehicles; families below the poverty line; and minority and low-
5 English-proficiency populations. *Id.* at 4–6. In an emergency, access to comprehensive census data
6 on these populations and an Index that aggregates it is critical to allow local governments to
7 quickly identify areas of need and respond effectively. *See* America Counts Staff, *From COVID-19*
8 *to Hurricanes, Census Surveys Help Areas Prepare and Recover*, U.S. Census Bureau (Apr. 9,
9 2020), <https://perma.cc/P2WC-CUFN>. In the event of a wildfire, for example, an Index helps first
10 responders immediately target evacuation assistance by locating populations that may not be able
11 to evacuate without assistance due to age, disability, or lack of vehicle access. *See, e.g.*, Santa
12 Clara County Community Wildfire Plan at 81 (Aug. 2016), <https://perma.cc/2RN4-5XL2> (noting
13 that it is crucial to identify carless populations, schools, and rest homes that may require significant
14 assistance in evacuation).

15 Similarly, in 2012, the City of New York relied on data from the decennial census to plan
16 the evacuation and care of older residents in communities affected by Superstorm Sandy. The City
17 used data regarding the concentration of residents 75 years of age and older to allocate generators
18 for Department of Health evacuation centers, ensure physical accessibility of coastal storm shelters,
19 and identify optimal placement of buses used to evacuate residents. Salvo, J, “Establishing
20 Priorities for the Privacy Budget: The Case for Good Age Data, Emergency Preparedness and the
21 2010 Census Demonstration Product,” Presentation at the National Academy of Sciences
22 Workshop on 2020 Census Data Products: Data Needs and Privacy Considerations, December,
23 2019, <https://perma.cc/T347-TM62>. The City also uses age and other census-based data to target
24 neighborhood-based services for the elderly, to determine where to activate cooling centers during
25 heat waves, and to identify populations particularly vulnerable to heat waves. *See id.*; New York
26 City Environment & Health Data Portal, *Heat Vulnerability Index*, <https://perma.cc/KM4K-VHY8>.

1 Inaccurate census data, particularly regarding hard-to-count groups, could cost lives in an
2 emergency because distrust of government in vulnerable populations makes it difficult for
3 emergency managers to identify and reach those populations. *See, e.g.,* A. Wolkin et al., *Reducing*
4 *Public Health Risk During Disasters: Identifying Social Vulnerabilities*, 12 J. Homeland Sec. &
5 Emergency Mgmt. 809–822 (Dec. 2015), <https://perma.cc/8WN8-7AVM> (“The most commonly
6 cited barrier [to identifying at-risk populations] was difficulty with outreach to certain at-risk
7 populations. There were several emergency managers who discussed the lack of willingness of
8 some individuals and organizations to share information for various reasons, such as distrust of
9 government....”). If Defendants’ decision to cut short 2020 Census operations renders data about
10 these socially vulnerable individuals and communities even less accurate and complete, they will
11 be even less visible to first responders in critical moments.

12 Accurate census data is also vital to public health functions, including local governments’
13 response to the COVID-19 pandemic. For several Amici, census data underlies the epidemiological
14 analyses used to understand the spread of COVID-19 and inform mitigation efforts. For example,
15 the County of Santa Clara relies on decennial census data—both directly and through the data the
16 Census Bureau produces from the American Community Survey (ACS), which itself is based on
17 decennial census data—to identify the County’s most impacted zip codes and census tracts, deploy
18 pop-up and mobile test sites, generate and distribute public messaging around preventative
19 measures, understand structural factors contributing to transmission, and develop programs to
20 address health inequities in the community. Other jurisdictions rely on census data in similar ways.
21 For instance, New York City relies on census data to identify the relative incidence of COVID-19
22 among the City’s neighborhoods and to identify vulnerable populations, such as the elderly, that
23 need special assistance. Bucks County, Pennsylvania uses census data to ensure its staff assigned to
24 contact tracing have the language skills necessary to effectively connect with affected
25 communities. San Mateo County uses census data to determine how to allocate COVID-19
26 economic relief to immigrant populations. And Monterey County has used census data to allocate
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1 Wi-Fi services to ensure that children without internet access can access online learning while
2 schools remain closed due to COVID-19.

3 Census data informs other important local government functions as well, including housing
4 development, law enforcement, school construction, and public services for vulnerable populations
5 like the elderly. For example, several Amici rely on census data in planning for the housing needs
6 of their residents. *See, e.g.*, County of Santa Clara Housing Element Update 2015-2022, at 58-91
7 (June 10, 2014), <https://perma.cc/8MF5-WZ9S>; Portland Housing Bureau, *State of Housing in*
8 *Portland* (2019), <https://perma.cc/KSQ5-3ZTP> (relying on census data to determine, *inter alia*,
9 population trends, housing tenure, number of persons per household, and the racial, gender, and
10 age composition of households). Likewise, LAUSD, like other school districts, relies on accurate
11 census data to project future enrollment arising from planned residential construction. *See, e.g.*, Los
12 Angeles Unified School District, 2018 Developer Fee Justification Study (Mar. 2018),
13 <https://perma.cc/D7VD-G52X>. And the City of New York uses census data to analyze
14 demographic changes to inform key decisions on changing school zones, building new schools, and
15 expanding existing ones.

16 Census data is also important for improving racial equity in the criminal justice system. For
17 example, the County of Santa Clara District Attorney's Office relies on census data to understand
18 racial disparities in the County's criminal defendant population, and has used zip code-level data
19 from the Census Bureau and the County's Public Health Department to develop policies that
20 address the unique needs of those parts of the County most acutely affected by crime and criminal
21 prosecution. *See* County of Santa Clara District Attorney's Office, *Race and Prosecutions: 2018*
22 *Update* at 1, 4-5, <https://perma.cc/C2WD-UQ7N>.

23 In all these cases, local governments require data that accurately reflects the population in
24 order to serve it. An inaccurate 2020 Census means that there will likely be concentrations of
25 individuals who are invisible to local government. This could significantly undercut local
26 governments' ability to evacuate vulnerable individuals, slow or halt an epidemic, and provide
27 other vital services. Nor is there any substitute for census data in performing these functions. In the
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1 past, the County of Santa Clara attempted to supplement census data through the use of private
2 demographers, but that effort failed because the private information simply was not reliable enough
3 at the level of granularity required by local government operations. Moreover, like the ACS,
4 private data is often based on the decennial census and therefore may not be a true alternative.

5 **B. Local Governments Rely on Census-Based Funding to Provide Vital Social**
6 **Safety-Net Services**

7 According to the Census Bureau, in the 2015 fiscal year alone, census data was used to
8 distribute more than \$675 billion in federal funds. M. Hotchkiss & J. Phelan, *U.S. Census Bureau,*
9 *Uses of Census Bureau Data in Federal Funds Distribution* at 8 (Sept. 2017), [https://perma.cc/
10 BQ32-MKM2](https://perma.cc/BQ32-MKM2). A large portion of this census-based funding goes to basic services like nutrition
11 support and health care for the community’s most vulnerable members, including victims of crime
12 and children who are low-income or have been subjected to severe abuse and neglect. *Id.* at 16.
13 Much of this funding flows through local governments, which are in many cases responsible for
14 administering these programs.

15 A decennial census that differentially undercounts Amici’s populations, or otherwise results
16 in inaccurate data about them, will inappropriately reduce the funds allocated for these critical
17 safety-net services. For example, several Amici administer programs that depend on tens of
18 millions of dollars in federal funding, including for victims’ services offices; Medicaid; Temporary
19 Assistance to Needy Families (TANF); the Special Supplemental Nutrition Program for Women,
20 Infants, and Children (WIC); Community-Based Child Abuse Prevention; foster care; and HUD
21 grants to improve affordable housing, homeless shelters, and infrastructure. Many of these
22 programs provide lifesaving benefits. WIC is one example; according to the federal government
23 itself, “WIC saves lives” and “improves the health of nutritionally at-risk women, infants and
24 children.” U.S. Dep’t of Ag., *About WIC-How WIC Helps* (Nov. 18, 2013), [https://perma.cc/
25 3FUF-UV4F](https://perma.cc/3FUF-UV4F). WIC provides food, nutrition education, breastfeeding promotion and support,
26 referrals, and access to health and social services to low-income infants and their mothers.
27 Similarly, TANF subsidizes food purchases by low-income families.

1 Unsurprisingly, access to such basic necessities has a profound impact on the health of
2 recipients and the community as a whole. For example, access to WIC benefits reduces infant
3 deaths, improves cognitive development in children, and increases the likelihood that children will
4 have regular medical care and up-to-date immunizations. *Id.* All of this results in savings to the
5 public as a whole. Children with these supports have the foundation to be healthy, productive
6 members of their communities—and in the short term, WIC has been shown to nearly halve health
7 care costs in the first 60 days after birth. *Id.*

8 Local governments also rely heavily on census-based funding, including child abuse
9 prevention funds, foster care funds, and social services block grants, to operate foster care
10 programs and initiatives to prevent child abuse. These programs identify and protect children who
11 are victims of physical or sexual abuse or serious neglect. They provide support for children and
12 families who can be safely kept together or reunited and safety for those who cannot. In some
13 cases, connecting families to the nutrition benefits outlined above can keep children in their homes
14 and avoid the trauma of family separation. And where child safety requires placement with a
15 different family, local governments provide support to the foster families that provide children with
16 stable and safe living environments. Like nutrition support, protecting children from abuse and
17 providing safe homes promotes the health of the entire community by promoting the health and
18 safety of its children. Census-based funding is critical to these efforts.

19 Schools likewise depend on census-based funding to support vulnerable student
20 populations. For example, schools use Title I funds to provide services to students who might not
21 be able to remain in school without support. Funding under Title II, Title IV, and the Child Care
22 and Development Block Grant program also provide critical resources for school districts to serve
23 low-income and special-needs students and thus support the goal of ensuring that every child has
24 the opportunity to thrive in school. For LAUSD, census-based funding through these programs
25 totaled more than \$367 million in 2017-2018. If funding is reduced, local schools that already face
26 challenges in providing basic classroom services will probably need to further curtail or cut non-
27 essential services. Inaccuracy and differential undercounts in the 2020 Census will drastically
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1 impact critical educational funding for Amici’s schools, with the consequences worse the greater
2 the inaccuracy and undercount.

3 Census-based funding also supports law enforcement agencies and crime victims and
4 witnesses. It funds offices that offer victims of domestic abuse, elder abuse, and child sexual abuse
5 help with filing claims for compensation, advocacy within the criminal justice system, crisis
6 counseling, and emergency financial assistance. The work of victims’ services offices, which are
7 partly supported by these funds, makes a significant difference in the lives of victims of crime.

8 Local governments have a near-universal charge to do more with less, and many struggle to
9 meet their basic obligations. The disproportionate undercount and compromised data quality that
10 will inevitably follow from Defendants’ decision to shorten 2020 Census field operations will
11 likely result in the loss of millions of dollars in federal funding allocated to Amici with no
12 corresponding reduction in the level of services necessary to address community needs. By way of
13 example, Montgomery County, Pennsylvania estimates that a five percent undercount of its
14 residents could cost the county more than 72 million dollars in federal funding for schools,
15 infrastructure, Medicaid, SNAP, housing choice vouchers, and other programs. Filling gaps left by
16 reduced federal funding will mean fewer resources for other community needs. As a result,
17 already-burdened local governments may be forced to reduce or eliminate services, causing
18 significant harm to residents who need the most support.

19 **C. Local Governments Need Accurate Census Data to Ensure Electoral Districts**
20 **Advance Principles of Representative Democracy**

21 Accurate census data is the linchpin to the constitutional guarantee of equal representation.
22 Local governments across the country rely on census data to ensure equality of population among
23 legislative districts. The Supreme Court has repeatedly observed that state and local governments
24 must apportion their single-member districts so that each district has roughly the same population.
25 These rules govern elections for state legislative seats, county boards of supervisors, and city
26 councils. *Evenwel v. Abbott*, 136 S. Ct. 1120, 1124 (2016) (citing *Brown v. Thomson*, 462 U.S.
27 835, 842–43 (1983)); *Avery v. Midland Cty., Tex.*, 390 U.S. 474, 485–86 (1968) (single-member
28 local government districts); *Reynolds v. Sims*, 377 U.S. 533, 568 (1964) (state legislative districts).

1 The Enumeration Clause’s articulation of “a strong constitutional interest in [the] accuracy” of the
2 census, *Utah v. Evans*, 536 U.S. 452, 478 (2002), facilitates the Constitution’s “one-person, one-
3 vote principle,” *Evenwel*, 136 S. Ct. at 1130, by furnishing the population data upon which to draw
4 electoral districts.

5 But governments cannot draw lawful electoral districts if they do not know how many
6 residents they serve and where those residents live. So inaccuracies in census data can introduce
7 disparities in size among districts. These disparities prevent residents—voters and nonvoters
8 alike—from having equal access to their local and state elected representatives, and corrupt “the
9 fundamental principle of representative government in this country ... of equal representation for
10 equal numbers of people,” *Reynolds*, 377 U.S. at 560–61. Accordingly, truncating census field
11 operations heightens the risk that inaccurate census data will undermine political representation,
12 especially in jurisdictions like Amici with diverse and unevenly distributed populations.

13 **II. Defendants’ Decision to Slash the Time for Critical Census Follow-Up Efforts Will** 14 **Cause a Differential Undercount and Undermine Census Data Quality**

15 Defendants’ decision to drastically curtail the time for 2020 Census data collection efforts
16 will undermine the accuracy of the census count and compromise the quality of census data,
17 thereby threatening the health, safety, and basic political rights of all of Amici’s residents—and the
18 residents of jurisdictions across the nation.

19 While the majority of households across the country self-respond to the census, the Census
20 Bureau engages in in-person follow-up efforts, called Non-Response Follow-Up or NRFU, for
21 those households that do not respond. The population requiring NRFU disproportionately includes
22 people from hard-to-count communities, including racial and ethnic minorities, non-English
23 speakers, undocumented immigrants, persons who distrust the government, and low-income
24 persons. In the Census Bureau’s own words, NRFU “is entirely about hard-to-count populations.”
25 U.S. Census Bureau, 2020 Census Operational Plan, at 212 (Dec. 2018) [hereinafter “2018
26 Operational Plan”], <https://perma.cc/VH4Q-EKSU>.

1 Even before the COVID-19 pandemic, the Census Bureau faced significant challenges
2 enumerating some of these hard-to-count groups, including in Amici’s jurisdictions. As a result of
3 the Trump Administration’s hostility towards immigrants and its efforts to politicize the census—
4 including its unsuccessful attempt to add a citizenship question to the 2020 Census, *see Dep’t of*
5 *Commerce v. New York*, 139 S. Ct. 2551 (2019), and its current efforts to exclude undocumented
6 individuals from the population count used to apportion congressional seats⁴—immigrant and
7 Latinx populations remain apprehensive about responding to the census. For example, community-
8 based organizations and county officials engaged in census education efforts in Santa Clara County
9 and Monterey County have reported fear and distrust from residents of predominantly immigrant
10 neighborhoods, including concerns about the privacy of census responses and the possibility that
11 they could be used for immigration enforcement efforts. Similarly, New York City has responded
12 to community members’ expressed concerns, fears, and confusion by expanding efforts to
13 encourage participation and dispel misinformation, including the misconception that undocumented
14 immigrants do not have to be counted or will be tracked and deported if they complete the census.
15 These communities’ hesitation to self-respond underscores why a fulsome NRFU effort targeted at
16 hard-to-count populations is critical for the 2020 Census to maximize the completeness and
17 accuracy of the enumeration.

18 The onset of the COVID-19 pandemic has further exacerbated the difficulty of obtaining a
19 complete and accurate count. Despite significant investment by several of Amici in raising
20 community awareness about the 2020 Census, the COVID-19 pandemic disrupted planned
21 outreach and educational efforts. The spread of COVID-19 forced the Census Bureau to suspend its
22 field operations and adjust its enumeration efforts to balance the need for an accurate population
23 count with protecting the health and safety of Census Bureau enumerators and the public. Of
24 particular importance, the Census Bureau did not conduct its NRFU efforts between May 13 and
25 July 31, 2020 (a period of 79 days) as originally planned. Instead, the Census Bureau announced on
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28 ⁴ *See City of San Jose v. Trump*, No. 5:20-cv-05167-LHK (N.D. Cal. filed July 27, 2020); *State of California v. Trump*, No. 5:20-cv-05169-LHK (N.D. Cal. filed July 28, 2020).

1 April 13, 2020 that NRFU would instead be conducted between August 11 and October 31, 2020
2 (81 days). Crucially, while the NRFU period was moved back, the length of the NRFU period
3 remained roughly the same. This made good sense: when it originally planned its NRFU
4 operations, the Bureau anticipated that 39.5 percent of the population would not self-respond, and,
5 as of August 3, 37 percent of the population indeed had not done so.

6 But now, Defendants have abruptly reversed course and decided to end all census data
7 collection on September 30, 2020, and to do so Defendants have reduced the NRFU period by
8 more than a third, from 81 days to 52. Census Bureau enumerators will now have to attempt to
9 count roughly the same number of non-responding households as originally planned for in less than
10 two-thirds the time. And they will have to accomplish this feat while the COVID-19 pandemic
11 continues to ravage the country.

12 To add another layer to the problem, the challenges presented by COVID-19 have also
13 frustrated attempts by local governments, including Amici, to support the Census Bureau's
14 efforts—support that the Bureau had assumed would be robust when it allocated 11 weeks to
15 NRFU. *See, e.g.*, 2018 Operational Plan, *supra*, at 10, 18-21, 105, 206, 209-211. Yet because of the
16 pandemic, traditional forms of local on-the-ground outreach—including person-to-person
17 assistance and education through libraries and community-based organizations—have been
18 replaced by social media, texting, and phone-banking. Curtailment of neighborhood canvassing, in-
19 person events, and in-person communication makes the already challenging task of encouraging
20 participation by hard-to-count communities even more difficult. These are further reasons that
21 shortening the period for data collection is especially harmful under the circumstances of the
22 pandemic.

23 Data from Amici's jurisdictions illustrate the challenges that enumerators will face in
24 attempting to obtain a complete and accurate count during a drastically shortened NRFU period.
25 For example, while Santa Clara County as a whole remains above the national self-response rate,
26 several census tracts in the County have self-response rates below 50%—meaning that more than
27 half the residents of those census tracts remain uncounted. *See* U.S. Census Bureau, *Response*

1 Rates <https://2020census.gov/en/response-rates.html> [hereinafter “*Response Rates*”]. The five
 2 hardest-to-count census tracts in the County—which include areas with significant foreign-born
 3 populations, limited English-speaking households, and high levels of poverty—each have 2020
 4 Census self-response rates that are significantly lower (in most cases 10 percentage points lower)
 5 than those tracts’ 2010 Census self-response rates. *See id.*; California Census Office, *Census 2020*
 6 *California Hard-to-Count Fact Sheet: Santa Clara County*, <https://perma.cc/55G8-RPKU>. The
 7 City of Stockton has some of the hardest-to-count census tracts in California. *See* California
 8 Census Office, *Census 2020 California Hard-To-Count Fact Sheet: Stockton City*,
 9 <https://perma.cc/PD7E-TD6C> (identifying several tracts with hard-to-count index scores of 111 and
 10 above, as compared to the median California index value of 59). And as of August 30, 2020, the
 11 self-response rates in New York City (57.4 percent) and Dallas (56.3) similarly remain below the
 12 national self-response rate of 63.1 percent, particularly in parts of these cities with significant
 13 minority populations. In Dallas, for example, almost half of the residents of several districts have
 14 not self-responded to the 2020 Census. Similarly, in New York City’s predominantly Black
 15 neighborhoods, average self-response rates are more than five percentage points below the City’s
 16 average, and certain largely Hispanic neighborhoods have self-response rates of less than 42
 17 percent. NYC Dep’t of City Planning, Weekly Reports on NYC 2020 Census Self-
 18 Response, <https://perma.cc/AWH5-JSR3> (August 6 Report, at 6); <https://perma.cc/Q6UY-H7AS>
 19 (June 4 Report, at 5). These disparities threaten to produce a significant differential *and* absolute
 20 undercount, as these two groups together constitute more than half the City’s population.

21 Reaching hard-to-count groups during a truncated NRFU process is further complicated by
 22 the fact that COVID-19 has disproportionately affected vulnerable residents for whom NRFU is
 23 especially important. For example, poor and Latinx neighborhoods in Santa Clara County have
 24 been the hardest hit by COVID-19, and many of the census tracts in these zip codes have
 25 significantly lower self-response rates than more affluent parts of the county. *See Response Rates*,
 26 *supra*; Leonardo Castañeda and David Debolt, *Death reports show coronavirus hits San Jose’s*
 27 *poor, Latino neighborhoods hardest*, San Jose Mercury News (May 10, 2020), <https://perma.cc/>

1 [9QVJ-CYJ3](#). High levels of COVID-19 infection and death create additional hurdles to conducting
2 an accurate count of communities with large immigrant populations in mixed-status families,
3 irregular housing, and low self-response. These hurdles necessitate tremendous efforts on the part
4 of the Census Bureau, efforts that are challenging at best, and close to impossible under
5 Defendants' sharp truncating of field operations.

6 By giving census enumerators even less time to contact the hard-to-count households that
7 are disproportionately represented in the NRFU universe, even though those households are often
8 the most affected by COVID-19, Defendants' decision will cause the Census Bureau to fail to
9 count even more hard-to-count households. When households do not self-respond or respond
10 directly to NRFU efforts—efforts cut short by Defendants' decision—the Census Bureau attempts
11 to count them by relying on proxies (such as neighbors and landlords), administrative records, and
12 statistical imputation. But these secondary data sources are substantially less accurate than
13 households' own self-response or NRFU response.⁵ The Bureau's increased reliance on these
14 secondary data sources produces at least two distinct harms to census data. First, by rushing NRFU
15 and forcing the Census Bureau to resort to significantly less reliable enumeration methods,
16 Defendants' decision will result in a differential undercount. Second, even in the unlikely event
17 that the Bureau is somehow able to accurately determine the *number* of people in hard-to-count

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19 ⁵ For example, proxies are significantly less likely to accurately report information about an
20 uncounted household. Thomas Mule, U.S. Census Bureau, DSSD 2010 Census Coverage
21 Measurement Memorandum Series 2010-G-01 at 30, Table 21 (May 22, 2012),
22 <https://perma.cc/9X7G-MJJQ> (during NRFU, proxies correctly report number of household
23 members just 70 percent of the time, compared to household members' 93 percent correct response
24 rate). And reliance on administrative records would also differentially undercount marginalized
25 populations, including racial and ethnic minorities, because these populations are among the least
26 likely to have sufficient administrative records. Sonya Rastogi and Amy O'Hara, 2010 Census
27 Match Study, U.S. Census Bureau at 47 (Nov. 16, 2012), <https://perma.cc/GX9X-RF5D> (higher
28 percentage of non-Hispanic than Hispanic households had matching administrative records data,
and thus relying on administrative records could “produce undercounts for various race, Hispanic
origin, and age groups”). Finally, since statistical imputation uses data from neighboring
households to predict the number and characteristics of an unenumerated household, error is
introduced because the demographic characteristics of households that do not respond are unknown
and may differ substantially from the characteristics reported by households that do. For example,
despite the use of statistical imputation in the 2010 Census, there were still statistically significant
undercounts of Blacks, Hispanics, and Native Americans. Mule, *supra*, at 16, Table 8.

1 households that remain uncounted after NRFU, there are likely to be significant inaccuracies in the
2 recorded characteristics (e.g., age, gender, race) of those households, undermining the accuracy of
3 census demographic data upon which local governments rely.

4 Defendants' decision entirely fails to contend with these plainly foreseeable consequences.
5 The decision offers no justification for shortening 2020 Census operations, other than the need to
6 meet a deadline that Census Bureau officials have already stated they cannot meet while fulfilling
7 the Bureau's basic constitutional duty. It does not even acknowledge the Bureau's deeply
8 researched prior plan to commit more than 11 weeks to NRFU, which the Bureau had preserved in
9 its April 13 decision to suspend field operations and postpone the NRFU period to August. And it
10 cites no evidence that the Bureau can obtain an accurate count on a shortened timeframe, despite its
11 prior conclusion that it could not. Defendants' absence of reasoned justification, lack of
12 explanation for the departure from the Bureau's prior position, and failure to consider important
13 aspects of enumerating hard-to-count communities during a pandemic on a drastically shortened
14 timeframe is arbitrary, capricious, and counterproductive.

15 Defendants' decision to rush the 2020 Census count by pursuing a course that will likely
16 bring about a differential undercount is also fundamentally inconsistent with the constitutional
17 mandate of a decennial census. As the Supreme Court has held, the Enumeration Clause of the U.S.
18 Constitution reflects a "strong interest in accuracy" of the Census. *Utah v. Evans*, 536 U.S. at 478.
19 The Secretary of Commerce's discretionary authority over the conduct of the census is not
20 boundless: he must exercise it in a manner that bears "a reasonable relationship to the
21 accomplishment of an actual enumeration of the population." *Wisconsin v. City of New York*, 517
22 U.S. 1, 20 (1996). Abandoning the Census Bureau's well thought-out COVID-19 operational
23 adjustments in order to rush to complete data collection is anathema to this constitutional directive.
24 Defendants' decision will worsen the accuracy of the census data collected, and by cutting NRFU
25 short, will specifically exacerbate the undercounting of hard-to-count populations, including
26 immigrant and Latinx communities. The consequences of this differential undercount will

1 reverberate to all residents, harming their fundamental right to equal representation and disrupting
2 local governments’ ability to deliver necessary services.

3 **CONCLUSION**

4 For the foregoing reasons, Amici Curiae respectfully request that this Court grant Plaintiffs’
5 motion for a preliminary injunction.

6
7 DATED: August 31, 2020

Respectfully submitted,

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